

Q. It would put in the river land which was shown by the survey to have been there as late as 1901?

A. Yes. If that line were correct, there would never have been any cut-off, for the reason that the river would have been there long before the cut-off. Look at this 1901 Mississippi River Commission map and you will see thereon the east bank of Centennial Island which was made by the cut-off. Now down here to the south of the Huddleston or Trigg tract, on the Tennessee main shore, the east bank of the Mississippi River is shown on this map of 1901 precisely as it was before the cut-off. This east bank down there never 342 caved after the cut-off for the reason that the water left that part of the country. Now the east bank of Centennial Island is a little further west than this east bank of the river south of Centennial Island on the Tennessee main shore. Of course this map of 1901 does not indicate the curvature of the east bank of the river south of Huddleston tract before the cut-off. The proof is that there was a landing on the south west corner of the Trigg tract before the cut-off. The river had caved nearly all of the John Jenkins tract away and had gotten so far that it touched the Trigg plantation on the south west and there was a plantation landing there. Hence, if the present east bank of Centennial Island was the west bank of the Mississippi River at that point, before the cut-off, the river had met itself long before the cut-off; in other words, the cut-off must have been made years before it actually happened. It is against every natural supposition and all the facts of the case and in direct violation of all natural laws and in direct contradiction to the testimony of all the witnesses who saw the cut-off or who know anything of this section of the country before the cut-off, to suppose that the present east bank of Centennial Island touched the Mississippi River before the cut-off. All the proof and all the traditions of the country show that the bank of the river was at least a mile east of the present east bank of Centennial Island before the cut-off.

Mr. Barton: Do you remember Capt. Joplin testified that there was no caving at the east end of Centennial after the cut-off?

A. Yes. There is no question about that. The cut-off washed away the east part of, and nearly all of the Trigg plantation 343 and left the present east bank there. After the cut-off there was no current or hydraulic force to make the bank cave there. If that had been the bank of the river before you can readily see Col. Suter didn't know what he was doing when he made that map, and it is generally thought that he was a very able man.

Mr. Barton: I understood that his map was run by compass; that he had a compass on the boat and the boat was rated, and while that was not absolutely definite, it gave approximate curves and approximate courses.

And further deponent saith not.

344 The next witness, J. P. WALT, who was introduced by the State of Tennessee, after being duly sworn, testified as follows:

Direct examination.

By Mr. Fitzhugh:

Q. Please state your name.

A. J. P. Walt.

Q. Where do you live?

A. Jefferson County, Arkansas.

Q. You have been subpoenaed here, I believe?

A. Yes, sir.

Q. Where did your people formerly live?

A. In Tipton and Shelby Counties.

Q. Are you familiar with the general physical conditions in the vicinity in which the Centennial cut-off was made?

A. Yes. I lived in that section of the country for quite a while the early part of my life.

Q. Do you know what was designated as the Trigg tract of land, prior to the cut-off?

A. Yes sir, I have some recollection of it.

Q. Have you seen it?

A. Yes, I have seen it years ago.

Q. I will ask you if it is not a fact that this tract of land of 1,000 or 1,200 acres was in existence and being cultivated just prior to the cut-off?

A. We lived in that section of the country up to 1868; we lived there during the civil war right above this property, but my 345 recollection of those early days is somewhat faint. After leaving there in 1868 or 1869 we lived over in Crittenden County, Arkansas, and we used to visit Mrs. Thomas; Mrs. Thomas and my mother were daughters of G. B. Bateman, who owned quite a lot of property in there. We would visit up there; we owned the property below the Trigg estate on the lower end of Centennial Island we used to go down there nutting, and passed through the Trigg estate; I don't remember passing through there more than twice in my life, in the sixties, I think it was 1868.

Q. The Trigg plantation was considerable in size?

A. Yes, it was a good sized place. I lived on Centennial Island from 1888 to 1893. I believe it was. We used to come from this direction up here. This is where we lived. We owned part of the Bateman property; it belonged to my mother and Mrs. Thomas. We owned all this property in here. There is where we lived down this way.

Q. You are not in position to state the number of acres?

A. It was a very large place, something like a thousand acres.

Q. You roughly estimate that there was in 1868, 1,000 acres of this tract?

A. Yes, sir. The Mississippi eaved in this bend; it came back

and caved that way. I was living in Memphis in 1876 when the cut-off was made.

By Mr. Barton:

Q. It caved which way?

A. It caved in this way, off Island 36.

346 Q. Where did it cave off the Huddleston tract?

A. This bend caved away back in here and went through this way. We owned this property here before the cut-off, we lived right in here.

Q. That would take off the east end of the Huddleston 2,000 acre grant?

A. We owned this part of the Huddleston grant, I think. There was something like 155 acres of the Bateman tract, and Bateman had some in here too.

By Mr. Fitzhugh:

Q. Do you recall whether after the cut-off a portion of this Trigg tract remained on Centennial Island?

A. Yes, sir, Stockley lived there. We had occasion to go up in there, had an uncle up there and we visited him. I was up there on a visit in June, 1876, and this bed was filling up some. Here is the channel, went this way three or four miles up stream in a south western direction.

Q. Did you have any personal knowledge or know anything about the boat that sunk at the head of Dean's Island?

A. No, sir, only from hearsay. My mother lived there during that period, I was quite young and don't know anything about it really. There was some investigation made it strikes me along in the eighties, I think about 1884. It was sunk during the civil war.

Q. Where was that?

A. Opposite Thomas' place; it was originally the Bateman property.

347 By Mr. Barton:

Q. Where was that with reference to Dean's Island?

A. Dean's Island was over here.

Q. Where was the boat sunk with reference to Dean's Island?

A. It was supposed to be sunk in the channel.

Q. How far below the head?

A. Possibly on the line west of north and south, possibly two miles.

Q. I want to get at the lines on the Huddleston grant. The other witnesses say that it lost so much to the Huddleston grant and then say that it made so much on the other side and didn't cut off this side. What side did it cut-off?

A. I will explain in this way in regard to this change to the river. This plantation was up here and come down here. When we lived in Memphis Mrs. Thomas lived there as late as 1869—my

mother's sister—and we come up on the steamboat and got off at Bateman's landing.

Q. Is that Mrs. C. C. Thomas?

A. Yes, Mrs. Thomas and my mother were heirs to this Bateman property. We would come up here and get off at Bateman Landing. The boat would be two hours making this bend. This is the Slade grant in here; there are about 250 acres, and there is a 500 acre tract down below Dean's Island. I went in there in 1888 and cleared up quite a lot of land and improved it.

Witness excused.

348 NATT SANDERS, a witness introduced by the State of Tennessee, being first duly sworn, testified as follows:

Direct examination by Mr. Fitzhugh:

Q. What is your name?

A. Natt Sanders.

Q. Was a summons served on you to come here?

A. Yes, sir.

Q. Did I ever see you before just now?

A. Yes, sir.

Q. Where did you see me?

A. Sitting in here.

Q. This is the first time I ever saw you?

A. Yes, sir.

Q. Where do you live?

A. Corona—Island 37.

Q. How long have you lived in that neighborhood?

A. Born there in 1851.

Q. Do you know the Trigg property?

A. Yes, sir, I was born on the Trigg plantation.

Q. Were you living around there from the time you were born until 1876, when the cut-off took place?

A. Yes, sir. I was making a crop there. I made a crop in 1875 and it washed away before I got it picked out.

Q. Just before this cut-off was the Trigg plantation there just as it had been before the cut-off?

A. Yes, sir.

Q. Had there been any caving on the east side to amount to anything?

A. No sir, it never caved any until the cut-off went through.

Q. The cut-off took it away?

349 A. The cut-off taken all of it.

Q. How big a plantation would you say that was?

A. Looked like about 1,500 or 2,000 acres, just to look at it.

Q. You say there had been no caving to amount to anything on the east side of that plantation?

A. No, sir.

Q. You were there at the time of the cut-off?

A. Yes, sir; I was living right there, had to move back in the woods, down west.

Q. The plantation, substantially like it had been, was there at the time the cut-off took place?

A. Yes, sir, the whole thing was there.

Q. You say you had to move out?

A. The whole thing had to move out from east to west of it.

Q. It caved very rapidly after the cut-off?

A. Yes, sir.

Q. Did it take in the Massey place afterwards?

A. The Massey place went off about a year after that, it caved off slow.

Q. Didn't take it all at first?

A. No sir. It took the Bateman place, the Brown place and the Trigg place.

Mr. Barton: Who owned the Brown place?

A. Massey owned it, but the first name was the Brown place. They were working that land before the cut-off went through.

Q. You have no interest in this matter at all?

A. Not a bit.

Q. Nobody ever talked to you about it?

A. Nobody ever said anything to me about it.

By Mr. Barton:

Q. What part of that place was the cultivated land on?

350 A. The cultivated land on that place when I used to go up on it was up where Mr. Cissna stays now.

Q. Where Mr. Cissna's house is now?

A. That is about a half mile (?) from his house, where I was born.

Q. That was on the Trigg place?

A. Yes, sir, that was on the Trigg place.

Q. How far is it from where Mr. Cissna's house is now to where Mr. W. H. Stockley's house is?

A. I guess it is about—Mr. Cissna's house, as near as I can get at it now is about two miles straight west from Mr. Stockley.

Q. How long is the Trigg place?

A. I don't know how long; it runs north and south this way up to the head, or what we call the head, next to Dean's Island.

Q. Whose land lay just east of the Trigg place?

A. They call that the Walt land and the Brown place it laid right at the east of it.

Q. Was this Trigg place cultivated up to the east line?

A. Yes sir, east and north of it, west and south of it, every way.

Q. What I mean is did the Trigg place have any woodlands or was it in cultivation right up to the line?

A. The whole east end went in, east of—

Q. I am not talking about the cut-off. I am talking about the woodland.

A. The wood land laid right to the west, north west of where it run, the open land, when the cut off went through.

351 Q. The field was cultivated right up to the Walt land?

A. The Walt land was right on the south of it.

Q. What was on the east of it?

A. We called that the Lem Thomas and Walt land up in that way.

Q. Was the cleared land clear up to the line?

A. Yes, right up to where Mr. Cissna is now; Dean's Island laid over towards what was Cedar Point then. Part of the main river now is got Dean's Island right in the middle of it.

Q. Dean's Island—I don't understand,—Dean's Island as it is now?

A. There was not much of a Dean's Island there then; it laid over on the other side toward Cedar Point.

Q. The main channel of the river came between Dean's Island and Pecan Point?

A. Yes, come around by Campbell's Lake, around Dean's Island. The river went around the Trigg place in this way; here was Dean's Island in the north part and the river come this way and here is our land near Thomas Landing. The Trigg land it was up here in the north east corner.

Q. Where was the land that Mr. Cissna lives on now, who owned that land?

A. There is a little piece of that land there now called Dean's Island.

Q. How far is that from Mr. Cissna's House?

A. I guess about a $\frac{1}{4}$ of a mile from his house, possibly a little over. All the Trigg land was on this side and Dean's Island on this side of the river and the boats came between Dean's 352 Island and the Trigg place, then.

Q. What do you call that channel through there—is there any channel there now?

A. We call that Old River. What was the main river in '76 they call that Campbell Lake now. It comes right up, coming to Dean's Island, that lake now and around this way; the main river in '76 was between Dean's Island and Corona now; Dean's Island then come in a shape like this and here was Campbell's Lake.

Q. Campbell's Lake is some distance from Mr. Cissna's house now?

A. Right against Arkansas.

Q. Do you know what they call McGavock or Barney Chute?

A. We called it Shawnee Village Chute.

Q. It is above Shawnee Village—I am talking about between Mr. Cissna and Arkansas.

A. That is what we called Shawnee Village Chute. It comes between Mr. Cissna and Pecan Point.

Q. Was that chute there before the cut-off?

A. Yes, sir; here is Arkansas, here is the chute and here is Tennessee.

Q. Do you know whether Mr. Cissna's house is on the old island or on the new land?

A. That stands on the new land.

- Q. What about the big mound at Mr. Cissna's, is that there now?
A. There is a big mound that was left when the water went down.
Q. Isn't that Indian Mound?

353 A. Indian Mound went in the river south of Mr. Cissna.
About here is the mound his house stands on.

Q. He built that mound since he has been there?
A. No, that was left when the water went down. All this was in a solid piece until the cut-off went through. I lived right across here.

By Mr. Fitzhugh:

- Q. You knew it and saw it and have been seeing it ever since?
A. I ain't been away from there, been there since I was born.

Witness excused.

Mr. G. T. Fitzhugh, Counsel for the State of Tennessee, thereupon introduced the following testimony, which is to be found in the record of the case of W. A. Cissna vs. State of Tennessee.
354 The following evidence was introduced by Mr. G. T. Fitzhugh, counsel for the State of Tennessee, said evidence being copied from the transcript in the case of W. A. Cissna vs. State of Tennessee: J. H. Humphreys, pp. 28 to 45, 113-114, 312-315, 505-518, 689-693; O. K. Joplin, 45-69, 112-113, 310-312; H. W. Stockley, 70-73; C. A. Stockley, 74-82; E. W. Massey, 83-106; R. W. Friend, 503-505; David De Walt, 524-532; Geo. W. Martin, 533-535.

J. H. HUMPHREYS, witness for the plaintiff (Cissna vs. State of Tennessee, 28-45), being first duly sworn, testified as follows:

Direct examination by counsel for plaintiff:

- Q. Please state your name and profession?
A. J. H. Humphreys; civil engineer.
Q. How long have you practiced your profession?
A. Forty-five years.
Q. How long in the State of Tennessee?
A. I have been in the State of Tennessee since about 1855.
Q. I will ask you, Major, if you have recently made any surveys for Mr. H. W. Stockley on Island 37 in the Mississippi River and on Centennial Island?
355 A. Yes sir; I have.
Q. When were those surveys made?
A. Last January; about a month ago; and a few days ago.
Q. Three different surveys?
A. Yes sir.
Q. I will ask you Major, if you have made any maps of that country that you surveyed?
A. Yes, I made some maps.

Q. Will you please examine this one that I now hand you and see if it is the map you made?

A. Yes, sir; that is it.

The plaintiff here introduced into evidence and exhibited to the jury the map made by Major J. H. Humphreys and thus identified by him, of the Tennessee main shore in the neighborhood of the two thousand acre tract granted to Simon Huddleston on the Devil's Elbow, Island 37, and Dean's Island, and the adjacent parts of Arkansas.

Q. Are all the lines represented on that map those that you run yourself or some of them taken from old records of surveys?

A. The black lines are boundaries of grants from the State of Tennessee; the blue lines represent the Mississippi River as it now runs, together with certain chutes.

Q. I pass you Major, some copies of various grants made by the State of Tennessee, and ask you if you used these instruments in the preparation of your map?

A. Yes sir; I used these.

356 Q. Will you please examine these instruments and state whether or not they are the ones you used?

A. I know they are for they have been in my possession until the last day or two.

Q. Here are some certified copies of the certificates of these old official surveys in Tennessee, am I correct in understanding that you used them?

A. Yes sir; I used them also.

Q. Will you point them out, Major?

A. Here the witness identifies the certified copies of the instruments used by him which were as follows: By the entry taker of Tipton County, Tennessee, the following certificates of surveys made by the official surveyors of Tennessee:

John Triggs, 30 acres, dated October 13, 1837.

John Triggs, 152 acres, dated October 14, 1837.

John Triggs, 151½ acres, dated October 14, 1837.

John Triggs, 37 acres, dated October 16, 1837.

T. P. Halls, 100 acres, dated October 16, 1837.

John Triggs, 100 acres, dated October 16th, 1837.

N. Patters, 640 acres, dated October 14th, 1837.

Chalmers, et al., 135 acres, dated October 13, 1837.

R. H. Burns, 200 acres, dated July 20, 1837.

T. P. Halls, 610 acres, dated October 14, 1837.

R. H. Burns, 204½ acres, dated July 20, 1840.

R. H. Burns, 274 acres, dated Oct. 16, 1837.

357 T. P. Halls, 148 acres, dated December 14, 1836.

C. I. Love, 172 acres, dated October 16, 1837.

James Sloan, 12 acres, dated December 14, 1836.

G. S. Fogelman, 125 acres, dated January 22, 1845.

G. S. Fogelman, 200 acres, dated January 23, 1845.

Simon Huddleston, 2,000 acres, dated December 19, 1823.

Stephen Slades, 2,460 acres, dated December 24, 1823.

By the Register of Shelby County, Tennessee, the following official certificates of survey by the official surveyors of Tennessee:

N. Patters 252 acres, dated November 11, 1837.

Green B. Batemans, 45 acres, dated January 4, 1837.

Geo. S. Foglemans, 100 acres, dated January 4, 1837.

By the Register of Tipton County, Tennessee, the following certificates of survey made by the official surveyors:

Green B. Batemans, 400 acres, dated November 16, 1845.

John Jenkins, 100 acres, dated December 27, 1823.

Green B. Batemans, 155 acres, dated March 7, 1836.

Green B. Batemans, 256 acres, dated February 10, 1837.

Heirs of John Benton and Jesse Benton, 1,636½ acres, dated November 24, 1834.

John Triggs, 253 acres.

Green B. Batemans, 56¼ acres, dated November 19, 1845.

By the Register of Tipton County, Tennessee, the following deeds:

John Trigg to Lucy J. Stockley, dated May 7, 1862.

358 William T. Brown to Henry C. Walker, dated June 4, 1853.

The foregoing instruments are copied in the record (W. A. Cissna vs. State of Tennessee) at another place—at the end of plaintiff's evidence—and need not be copied here.

Examination of witness resumed:

Q. Major, have you examined the records in the office of the Register of Shelby County?

A. Yes, sir; I have.

Q. You are, of course, familiar with the records in the office of Shelby County?

Objection to this question by counsel for defendant as having no bearing on the case at bar. Objection sustained.

Q. Now Major, I have handed you some plats from the land office, will you identify them as having been used by you in the preparation of your map?

A. Yes sir.

(Here witness identifies the several plats).

Counsel for plaintiff here introduces the several plats and surveys which are as follows:

Plat from the General Land office of the United States of the Department of the Interior of T. 9 N., R. 9 E. 5th principal meridian of Arkansas.

Plat from General Land office of the United States.

Plat from the General Land office of T. 9 & 10 N., R. 10 E., 5th principal meridian of Arkansas.

359 Plat of T. 9 N., R. 9 East of the 5 principal meridian of Arkansas.

Tracing of the survey of Frac. T. 9 & 10 N., R. 10 East, dated Little Rock, Ark., 30 Dec., 1834, from General Land Office of the United States.

Plat of T. 9 N., R. 8 East of the 5th principal meridian of Arkansas.

Q. Major, is that map made from your own actual surveys made upon the ground?

A. It was constructed first from the plats and then the measurements I made also.

Q. Now Major, tell the Court how the map was made?

A. Well, the first survey I made I began on the northwest corner of the Benton fourteen hundred acre tract, produced that line north and crossed the river and then ran up the river to connect on the Huddleston grant and located the northeast corner of the Huddleston grant, then after making various surveys to show the sand bar, I ran from where it crossed the old river there up onto Island 37 and connected with the corner. Subsequently I began at the corner that Mr. Groves showed me and ran a line to make the intersection, and in that way established that corner; I also ran from that corner due east over to Arkansas, I then came up here to the corner of 11, 12, 13 and 14 and ran one mile south, where I found a tree marked for a corner, and then ran two miles east where I found another tree; and then ran south until I intersected with this other line which I had run.

360 Q. Then that map is drawn from these original surveys and your own lines run from a fixed point on the shore of Tennessee to a fixed point on Island 37?

A. Yes sir.

Q. Is that map an accurate representation of all the lines shown there?

A. Yes sir; it is.

Q. It was made by your best skill and care, was it?

A. Yes sir.

Q. Major, will you explain to the jury how you ran on the Tennessee main shore?

A. I began at the corner of the Benton grant.

Q. Who showed you the corner?

A. Mr. S. S. Bateman and Mr. E. W. Massey. You understand that this is the river as it now runs and here is the way it originally run; the river now runs between these two lines. This is the bank of the old river and this is the McKenzie chute between Island 37 and the main shore; this is what is known as the Devil's Elbow.

Q. Did the deeds furnished you at the time enable you to run those lines by their calls for adjoining tracts?

A. Yes sir.

Q. Will you state as to whether your work was accurately done.

A. Oh yes; it was accurately done.

Q. You did it with the utmost care?

A. Yes, I used accurate instruments for the purpose. I then ran the north line of the Huddleston Grant along McKenzie 361 chute; subsequently I ran a line to where it struck this old river and ran on into Island 37; here I established this corner; and then ran a line due east into the State of Arkansas.

Q. Who was it that designed the corner where you started?

A. Mr. Groves.

Q. Was there anything there to lead you to doubt the accuracy of that corner?

A. Nothing at all. I ran a line due east from there to a stake on the Arkansas bank and then came up there to the corner of sections 11, 12, 13 and 14, Township 10 N., R. 9 E.

Q. Now Major, you were describing the line which you ran into Arkansas; who was it that pointed out that section corner to you?

A. It was Mr. Farnville.

Q. Is he the gentleman who testified here this morning?

A. Yes sir.

Q. Tell us how you ran that line, and what marks, if any, there were, to show you that you had struck a section corner?

A. I began at an iron stake which he showed me and ran to two gum trees with lines on them. I then ran one mile east and found another tree marked, then two miles east and found a stake tree marked to proper distance, and then a half mile from there found an iron stake at a proper distance.

Q. Are you familiar with the system of government surveys?

A. Yes sir.

Q. Is it not a fact that they mark each section corner?

A. Yes sir.

Q. Were you perfectly satisfied that you had located a section corner?

362 A. Yes sir; I had no doubt about it at all.

Q. This map that you have here represents the actual survey that you made from these accepted and established corners?

A. Yes, these corners are all on the map. This survey was made for the purpose of connecting the Tennessee survey with the Arkansas survey.

Q. Did you run a line from any fixed point on Island 37 to a fixed point on Centennial Island?

A. Yes, I began at a fixed point on Huddleston's north line and ran to the northeast corner of the Trigg 100 acres on 37.

Q. Was that the corner Mr. Groves showed you?

A. Yes.

Q. I believe you stated that you had already begun on the Tennessee main shore at Benton's corner and had run Huddleston's east and north line?

A. Yes sir.

Q. Then that made a continuous line which you ran from the Benton corner on the Tennessee main shore to this Trigg 100 acre northeast corner on 37, did it?

A. It did.

Q. Were you able to run these lines accurately and fix these points on Centennial Island and Island 37 accurately?

A. Yes sir.

Q. Then you took the certificates of surveys and deeds and other records given you and platted in the other tracts on 37 and the Tennessee main shore in order to make a map, did you?

363 A. Yes, but the map shows many actual surveys that I made.

Q. State whether or not the lines and figures which purport to

show the present condition of things were actually run by you or not?

A. They were. The lines of the old tracts and the course of the river and McKenzie chute are all that are platted from the old surveys. The rest of it was made from the surveys that I made.

Q. Did you chain these lines and thus obtain the locations and distances that you have given?

A. I did in all instances except in crossing from the Tennessee main shore. That was done, of course, by triangulation.

Q. Were your measurements all accurate?

A. Yes, as accurate as I could get them.

Q. How did you connect the Arkansas bank with your surveys on 37 and Centennial Island and the Tennessee main shore, if you did so?

A. As I have stated, I began at the northeast corner of the Trigg 100 acres on 37, which I had already established, and ran due east until I struck the Arkansas bank. Then I drove a stake to mark the spot, then I went to the corner of Sections 11, 12, 13 and 14 in Tns. — N. R. — E. in Mississippi County, Arkansas, and ran south one mile to a marked section corner. Then I ran two miles to another marked section corner, then I ran south until I had found the other line I had run from the starting point on 37 to the Arkansas bank.

Q. Was the section corner where you began the one pointed out to you by Mr. Farnville?

364 A. Yes.

Q. Were you able to locate the Arkansas bank when the township plat was made, or rather when the United States government survey was made in 1823?

A. Yes sir.

Q. Were you by the lines you ran able to locate the Tennessee shore on Island 37 in reference to the Arkansas shore on Dean's Island?

A. Yes sir.

Q. How did you draw Dean's Island and the other parts of the Arkansas shore on your map?

A. From the certified copies of the original government surveys as shown by the plats in the general land office. Having run a line from the Tennessee shore to a fixed section corner in Arkansas, I took the plat of the township surveys and platted in Dean's Island and the neighboring townships, as shown on the maps.

Q. Did this method enable you to locate accurately the banks of the river at the time the surveys were made in 1823?

A. It did.

Q. From these surveys and drawings you have made and the government surveys in Arkansas and the official surveys in Tennessee, state whether or not you were able to accurately measure the width of the river as it was in 1823, the date of the original survey?

A. Yes, it can be done very accurately from this data. You see I have connected the corners of the old surveys made in both states by an accurate survey. I think it can be done very accurately.

Q. Then what was the width of the river measuring across from the bank near the northeast corner of the 100 acre tract on Island 37?

A. 76 chains.

Q. What was the width of the river measuring directly across from Huddleston's northeast corner?

A. 85 chains.

Q. State whether or not from these old official surveys that is the United States Government Surveys and the official surveys made in Tennessee, all made about the year 1823, and from the data gathered from your own surveys did you cover the middle of the main channel of the Mississippi River as it was then between Dean's Island on the one side and 37 and the Huddleston tract on the other?

A. I have.

Q. Do the lines purporting to show it on your map show it correctly?

A. They do.

Q. Suppose the boundary lines between Arkansas and Tennessee to be the middle of that main channel of the Mississippi River as it was in 1823, would the lines on your map represent it correctly?

A. They would.

Q. Have you ever surveyed the larger tract of land described in the declaration and claimed by the plaintiff, Stockley, in this case?

366 A. I have.

Q. Is that the larger tract of land shown you upon your map and marked A?

A. Yes sir.

Q. Is this tract of land within the State of Tennessee if the boundary of the state is assumed to be at the middle of the old main channel of the Mississippi River, as it was at the middle of the old surveys in 1823?

A. It is, except that it runs over to a little extent as I have described to you.

Q. Is the smaller tract described in the declaration, and marked B, on your map within the boundary of the State of Tennessee as it was in 1823?

A. It is; it is a part of the old Huddleston granted by the state of Tennessee.

Q. Did you survey this smaller tract?

A. I did.

Q. What is its area?

A. One hundred and thirty-one acres.

Q. And it is within the boundaries and part of the old Huddleston tract?

A. Yes sir.

Q. Describe the land as to its height at the point where you ran the north line of the old Huddleston tract on to the present high bank of Centennial Island?

A. It was about as high as it was any where on that island. It ran about to the middle of Stockley's field there.

337 Q. What have you to say of the appearance of the age of the land there?

A. Oh, I could tell nothing about that. He seemed to be as old as the other land he has in cultivation. To the north near to 37 it is lower.

Q. But how was it at the point where Huddleston's north line ran into Stockley's field?

A. It was just a part of his cotton field; cotton was growing on it and hands were picking it. I could see nothing to show any difference in the time it was made from the other part of his field.

Q. I notice that your map shows the Trigg 37 acres, the Trigg 30 acres, the 135 acre tract belonging to Chalmers and others, and the 200 acres to R. H. Burns on 37 to be on Centennial Island now. How about that?

A. That probably resulted from the caving on 37 and the making to Stockley's place on Centennial Island.

Q. I mean is it a fact that these old tracts are now south of the old slough or dry river you show on the map?

A. Yes, it is; they are all enclosed inside of Stockley's fence on Centennial Island now.

Q. How far is it from Stockley's field on 37 to his field on Centennial Island?

A. It is about 250 or 300 yards. I did not run the distance though.

Q. Then, this Burns 200 acres and the Chalmers 235, and the Trigg 30 and 37 acres are enclosed in Stockley's field on Centennial Island, at the present time?

368 A. Yes, except what is included in the bed of old river.

Q. Did Stockley's east line that you ran go over on Centennial Island?

A. Yes, on to what is now called Centennial Island.

Q. Then Stockley's land on 37 joins his land on Centennial Island?

A. Yes, except that old river is along there.

Q. I mean that there is no stream of water between them?

A. No not unless in time of high water.

Q. In running the east line of the Trigg 100 acres and the Potter land on 37, did the line at any place run off the high bank of the old original land down on to the made land?

A. It did. The bank bends in toward the west and that line runs north and south.

Q. What was the distance from Trigg's northeast corner of his 100 acre tract where you began to survey to the point where the line ran off the high bank to the made land?

A. 32 chains.

Q. Then part of Potter's 640 acre tract that Stockley now owns was washed away and now includes part of the main land?

A. Yes, I think so. It certainly includes a part of the main land.

Q. Does this made land there lie directly against the old high bank of 37 which still remains there?

A. Yes, it is right by Stockley's field all along there on 37. You go right down off the land on to the made land.

Q. What lines of the old Huddleston grant did you run?

A. I ran the east line and the north line.

369 Q. The east line and the north line, where is the south line?

A. The south line is in the river.

Q. I will ask you, Major, if that smallest tract marked "B" is within the lines of the Huddleston grant?

A. Yes; it is.

Q. I notice a place on this map marked Sandy Chute, is that laid down from actual survey?

A. Yes, it is laid down by actual survey.

Q. Will you describe Sandy Chute, whether or not it has water in it and the nature and description of its bed?

A. Sandy Chute has no water in it except an occasional pond. There is a considerable pond at one place, but for the most part it is just barren sand.

Q. What is the width of Sandy Chute?

A. Six or seven chains.

Q. What is the elevation of its banks above its bottom?

A. Six or eight feet.

Q. You have a place marked on this map called old river, will you describe it?

A. Well, that is deeper than Sandy Chute, and has not so much sand in it; during last winter the water flowed through old river, this summer it was quite dry all along at the north part of it has a lot of holes in it.

Q. I will ask you if there is any road across old river?

A. Yes, there is a road leading from Corona to Island 37, and this road also leads into Arkansas.

Q. Does that road cross this place on a bridge?

370 A. No, there is no bridge there at all.

Q. Is there any water in old river?

A. There is not now.

Q. About what is the elevation of its banks?

A. Twelve or fifteen feet I should think.

Q. Major, did you notice this old main land on the Huddleston grant where the call of thirty-two chains of the north line ran on it?

A. Yes, I recollect it.

Q. I will ask you if there is any sign or indication of McKenzie Chute, or Chute of 37, as it is called, at that place?

A. No, none at all.

Q. Is there any difference as to the land north of the line and south of the line in point of elevation?

A. No, I do not think there is.

Q. I will ask you whether this land marked H. W. Stockley is in cultivation or woods?

A. Most of it is in cultivation.

Q. Will you show the jury Stockley's land on Centennial Island that is in cultivation?

A. (Here witness points out this land.) Along down in here there is eight or ten acres that is not in cultivation.

Q. What is the distance to this north bank of old river from Huddleston's north line?

A. About forty chains, a half mile.

Q. Then Stockley's extends from where it was a half mile to what was at that time Island 37?

A. Yes sir.

371 Q. Major, I will ask you to point out on this map the high bank of Island 37 where the made land comes to.

A. It is pretty well defined by this road; the road is right on top of it.

Q. Then, these tracts of land have all been made there?

A. Yes, they have all been in the river, but have filled up, this whole territory has filled up.

Q. Will you tell us what these red lines are here?

A. That red line there represents the middle of the river at the time of the original survey, but these lines here the original bank.

Q. What was the width of the river right here at Huddleston's northeast corner?

A. Eighty-five chains.

Q. What is the width of the northeast corner of the Trigg 1,000 acre tract on Island 37?

A. About seventy-two chains.

Q. I will ask you, Major, whether that red line indicates as correctly as you can measure it, the middle of the river when these surveys were made?

A. Yes, taking the original survey of the Arkansas bank and the original Tennessee bank as shown by the survey.

Q. What is the nature of that country through which these lines run?

A. It is pretty good country capable of cultivation.

Q. Is it in the woods?

A. Yes, there are trees there two feet in diameter.

372 Q. I notice a place here marked Stockley, what place is that?

A. That is the place called the towhead.

Q. What is the width of old river at the towhead?

A. It is pretty hard to get the width of the river here, it is dry one time, at another wet and then under water.

Q. In other words, old river is not much lower than the towhead bank?

A. No sir; up there it is higher.

Q. Are the high banks that remain there on 37 clearly defined?

A. Oh, yes.

Q. Point out to the jury, Mr. Stockley's land on Island 37?

A. Well, this is the west line of it right here; it extends east to here, and this is the north line.

Q. The south line is over a considerable distance in his field on Centennial Island, is it not?

A. Yes.

Q. I will ask you to point out to the jury the course of the river as it is now?

A. Here it is (indicating on the map).

Q. Point out his land on Centennial Island?

A. Here is his land on Centennial Island. Centennial Island and 37 run together, there is nothing here to show where McKenzie Chute is, it is all filled up.

Q. Running the lines through 37, across into Arkansas, tell if you found the Arkansas bank?

A. Where I run across in connection with the Arkansas 373 survey the bank seems to be almost where it was in the original survey.

Q. Was there and (?) remainder of that bank there.

A. The bank is there now.

Q. Did you run this north bank of Sandy Chute and the east bank of old river?

A. Yes sir.

Q. What is the width of the river where you measured across in running from the Tennessee side?

A. About sixth (?) chains.

Q. How many chains in a mile?

A. Eighty.

Q. Did you run this east bank of Stockley's place on Centennial Island?

A. Yes, I run part of it.

Q. Now, Major, take this map and show us what part you did run?

A. I started here and run all along here and the other side. I run all the way.

Q. State whether or not you have ever surveyed any land for the plaintiff, H. W. Stockley, on Island 37, if so, when?

A. Yes, in the month of October of this year, I surveyed this land on 37 for Mr. Stockley.

Q. Where did you begin, from point or corner?

A. I began at the north east corner of the John Trigg 100 acre tract, which is part of Stockley's place.

Q. Who pointed out this corner to you, if any one?

A. A Mr. Groves.

Q. The same man who testified here this morning, I believe you have said?

A. Yes sir.

Q. Now tell the court what lines you ran?

A. I ran the east line of the Trigg 100 acre tract, and the east line of Potter's 640 acres, which is but a continuation of the Trigg line. I then came back to the high bank of 37 and chained it until it intersected Stockley's west line, which is the Potter west line. I then ran the other lines of that tract.

Q. Describe that high bank of 37 you speak of.

A. It appears to be what remains of the old original bank of 37. It shows that it was the bank of the river at one time. On top of it and extending to it is Stockley's field which he has in cultivation.

Right by and against it is the made land which is covered by a thick growth of cotton woods and willows.

Q. Does the old bed line which you call old river, lie right against the high bank of 37?

A. It does against the south bank, but not against the east bank I was speaking of. It does not come precisely at the point where the high bank begins, it strikes the high bank two or three hundred yards further west.

Q. I believe you said you chained this high bank of 37 on the south of the island?

A. Yes, until I struck Stockley's west line.

Q. Was that south bank a high bank and part of the original land?

A. Yes, it is clearly the old original land. That can be told by the elevation of the bank which appears to have been a cavity bank at one time, and the remains of the large trees standing dead in Stockley's field, and the timber just west of Stockley's.

Q. Do the blue lines marking what you call old river on your map show the present location of it?

A. They do.

Q. Does the road you have marked on your map as running from Corona on Centennial Island over to 37 run along this original high bank after it gets on to 37?

A. It does. The road runs on to Arkansas, I was told, but it is only shown on the map to be the point where I actually surveyed it.

Q. I will ask you, if, in your opinion, judging from what you saw there is this old high bank on 37 *is* (?) what was the high bank of the river at one time?

A. It is. The indications show it to have been the bank of the river at one time, and I was informed by the people around there that the river ran there prior to the cut-off.

Q. State whether or not the land described in the declaration lies against and adjoining the land owned by Stockley and the old Huddleston tract, or what is left of it on Centennial Island.

The defendant objected to this question because it tended to prove title to land by parole; the court stated that the title to any land in controversy could not be proved except by proper title papers and that this and similar questions could be asked for the purpose of designating land or tracts and would not be received as proof of title to said lands.

A. It does, it lies in front of his land on 37 and touches 376 it and extends south to his land and the towhead and covers part of the Huddleston tract and the washed away tract on 37. They are all joined together now. But this land he is claiming as accretions now is lower than his land on both islands.

Q. Is it lower than Stockley's land on the towhead?

A. No, I think not.

Q. Is there anything to separate the smaller tract from the larger tract?

A. No, they are all in one body of made land. I don't know why they are described separately.

Q. I will ask you, Major, whether or not in entering Stockley's field this made land is not right there in plain view?

A. Yes sir, it is. It adjoins his field, but the road runs along there.

Q. Is it not very noticeable when you enter his field on 37 by the road coming from Corona?

A. Yes, it is there plainly in sight.

Q. I will ask you is it possible for any one to go on his place on 37 and not notice this made land?

A. Of course not, his field runs right up to it, and the road is right along there on the bank. The made land is covered with a thick growth of tall cottonwood trees that grow right up to the bank on which the field is. You can not help but see it.

Q. State whether or not in your opinion the field and made land do not appear to be all the same body of land?

A. Yes, it would—to any one to be accretions to Stockley's 37 place because it is generally understood that the accretions belong to the man who owns the land along the bank.

Q. State whether the Trigg 152 acres and the 37 acre tract on 37 are east or west of the high bank that remains there now?

A. They are all east of the high bank except a small part of the 152 acres, which is still there on the bank in the field.

Q. State whether or not the remainder is part of the made land down in the old bed of the river.

A. Yes. It must have been washed away at one time and has been made back. All of those two tracts lie out there in the woods now except a small piece of the northwest corner of the 152 acres, which is on the top of the old bank in the field.

Q. How much of it was left there?

A. I don't know, I did not measure it, probably fifteen or twenty acres.

Q. What is the scale of this map you have made and we have introduced here?

A. Thirty chains to the inch.

Q. Now on the Potter grant there east of that road, did you run the bank?

A. Bank of old river; yes, sir.

Q. Does the bank come inside of the Potter grant?

A. Yes, part of the Potter grant had been washed away.

Q. Does this road there mark the remains of the grant?

A. Yes, that road is just on the edge of the bank after crossing the river, it is on the edge of the bank.

378 Q. Was there any pond there?

A. Yes, this is the pond right here.

Q. Tell us about the width and depth of this pond?

A. It is three or four chains wide, and from two inches to one foot deep, it is mostly mud, the last time I crossed it I did not have to wade.

Q. Major, what is the distance measured from Huddleston's east line to this road that you have spoken of?

A. One hundred and five chains.

Q. One hundred and five chains, a mile and a half?

A. Nearly.

Q. Major, what is the distance from Mr. Stockley's southeast corner, northeast to the Huddleston line on the shore?

A. One hundred and thirty chains.

Q. What is the distance from the old river down there from the John Jenkin's place up to the center of Mrs. Stockley's field?

A. Eighty-five chains.

Q. Major, will you tell us whether the larger tract described in the declaration is the same as the tract of land shown on your map and marked "A"?

A. Yes, that covers it and a little more.

Q. The land in the declaration?

A. Yes sir.

Q. What is the distance over?

A. Six or seven chains.

Q. Then the land described in the declaration extends six or seven chains further east?

379 A. Yes sir.

Q. This last call in here is about the same?

A. Yes, about the same, a difference of half a chain.

Q. Then, the larger tract of land that shows on the map marked "A," the tract described in the declaration, includes all that tract?

A. Yes sir.

Q. Major, did you survey the larger tract of land by actual measurement?

A. Yes sir, I did.

Q. Now, I will ask you this question. Major, in going up this road to 37 after crossing old river, can you see this made land from that road?

A. Yes sir.

Q. It is plainly visible?

A. Yes sir.

Q. Does it appear to be attached to that land right along the road?

A. Yes, it appears to be attached to it.

Q. The bank of 37, is that higher than the made land?

A. Yes, it is some higher.

Q. About how much higher?

A. The made land at the foot of the bank is ten or twelve feet lower, it rises some as it goes east.

(By the Court:)

Q. What makes Centennial Island?

A. Centennial Island is a part of the main land of Tennessee that

was cut off by the river at the time of the Centennial cut-off
380 in 1876, now the river comes in here and makes a great bend,
there is not much land on Centennial Island proper. You
would never know when you passed from Centennial Island into
Island 37, there is nothing there between the two.

Q. Now Major, is there any sign of that chute in there at the place
your maps show it?

A. None whatever.

Q. What is there in there?

A. They call it old river, just by way of giving it a name.

Q. How did they get this old river so far north?

A. I don't know, but I suppose it had cut in there before the cut-
off came.

Q. I will ask you, Major, if that red line there is the middle of
the river at the time these surveys were made?

A. Yes, that represents the middle of the river, taking the original
surveys on that side.

Q. Now Major, I hand you a recent grant and entry. I wish you
would look at them and see if they show any of the land marked on
this map?

A. Yes, they show practically that marked "A" here.

Q. Does the middle of the river run practically the same?

A. Yes, practically the same in here.

Q. I will ask you to read the date of this grant, the entry is H. W.
Stockley, dated on the 20th day of April, 1901, and state whether
it is practically the same as that tract marked "A" on your map.
The grant is dated November 26th, 1901, by the State of Tennessee
to H. W. Stockley.

381 A. Yes, it is substantially the same.

Q. Then Major, this land marked to W. W. Stockley is the
land in front of his?

A. It lies just east of it.

Q. Yes, that is what I mean. Now, Major, what sort of land is
that marked "A," does it bear any identification of being made land?

A. Yes, I think it does.

Q. What is the character of timber on it?

A. Almost entirely cottonwood.

Q. Are there any willows on it?

A. Yes, some willows, not much except in wet places, mostly cot-
tonwood.

Q. Is there any cleared land on towhead belonging to Mr. Stock-
ley?

A. Yes sir; there is a field there.

Q. What did you estimate the size of the field to be?

A. I did not examine it closely. I would think about forty or
fifty acres.

Q. In what direction from Centennial Island is the main channel
of the river?

A. Do you mean the present main channel of the river?

Q. Yes sir.

A. It is south of Corona.

Q. That map was prepared as carefully as you could do it, was it?

A. Yes sir.

Q. According to the surveys of 1820, as far as you have made them, did not the line of Tennessee and Arkansas run right along in here?

382 A. Yes, sir; this was the original survey on the Tennessee side, and this on the Arkansas side.

Q. Will you point out the present course of the river?

A. Here it is between these blue lines.

Q. How did you find that, Major?

A. I found it by actual survey.

Cross-examination by counsel for defendant:

Q. Major, you have furnished the description upon which this claim was made, have you not?

A. I don't know whether I did or not. I may have done so.

Q. Who proposed to have the examination made?

A. It was Mr. Stockley's lawyer.

Q. Well, Major, I believe you made several surveys.

A. I have been up there several times surveying.

Q. When did you make this survey?

A. Just a short time ago.

Q. You then remember what you stated was the channel of the river of 1823?

A. Yes sir.

Q. You were in about fifteen feet of the right bank?

A. I may have been.

Q. Now, in what you state was the middle of the stream, there were cotton-wood trees two or three feet in diameter?

A. I called it middle pond.

Q. You say this pond was dry, how long ago did it go dry?

383 A. I could not tell. I think it very likely it has water in it not at high water.

Q. Between this place and the Mississippi River were large trees getting down to small bushes on the bank?

A. Well, I don't know about that, they got larger up at Sandy Chute, though there was no great difference in the size.

Q. Now, Major, take this map here and point out Dean's Island.

A. Here it is.

Q. What direction is that?

A. It is east.

Q. Does the river run this way?

A. It does not run this way now, it runs here now.

Q. Is it a fact that the corner of Dean's Island has washed away?

A. I understand it to be a fact, I do not know.

Q. Now, this in here is made land, is it?

A. Yes sir.

Q. And all of this in here is made land?

A. Yes sir.

Q. And where you have the river of 1823 there are trees two and three feet in diameter?

A. Yes, sir; here is where the river is now but there is where it was.

Q. Where, according to this map, would the cut-off be?

A. Well, I could not locate it definitely.

Q. Could you give us your best idea?

A. The cut-off occurred from the best information I could get, a short distance from this point here.

384 Q. Where did the cut-off take place from what you know?
A. I do not think any surveyor could say definitely where the cut-off took place.

Q. Then this line in here represents the middle of the river in 1823 by your survey?

A. Yes sir.

Q. Where was the middle of the river in 1876?

A. That is more than I could say.

Q. Have you undertaken to draw on the map the river of 1876?

A. No sir; I have not.

Q. Were you informed as to where the river was in 1876?

A. No, sir, I was not.

Q. Do you think the river came further over this way from 1823 to 1876?

A. This ground here shows that it had all been under the river up here to this road.

Q. Now, in order to make it perfectly plain, this land in here has at one time been under the Mississippi River?

A. Yes sir.

Q. I will ask you if you know about how long since it has been under the water?

A. I do not know anything of my own knowledge except from the size of the trees I saw there.

Q. How old did those trees look to be?

A. Some of them were nearly three feet in diameter.

Q. Where does that made land appear to stop?

385 A. Here, it is right here.

Q. At this old river?

A. Here is the boundary of the made land on Island 37 apparently and I would judge that this land here had all been in the river and this in here has been in the river.

Q. Well, now your idea is that this island, or all this part here, passed under the river to this point on old river?

A. Yes sir.

Q. Do you know whether this land filled up here before or after the cut-off?

A. No sir, I do not know.

Q. You know that this land here claimed by Mr. Stockley at one time has been under the Mississippi River?

A. I think so, from the indication that it has.

Q. I will ask you whether you examined the river sufficiently to say if this map accurately represents the whole of Dean's Island?

A. I can recognize some of it, some of the features are the same, but I would not like to say that it represents it very accurately.

Q. Do you know that old river is the bed from which the river turned in the cut-off of 1876?

A. No, I do not understand it.

Q. Has this point here passed under the water?

A. Yes, I have said that.

386 Redirect examination by counsel for plaintiff:

Q. By all that you mean to say *is* that the land has been under the river?

A. Yes, it has that appearance.

Q. Mr. Ewing has spoken of some little trees on what is called the towhead, is the towhead a sand bar?

A. Well, it is quite sandy.

Q. Should not the size of the trees depend upon the quality of the soil?

A. Yes, I think so.

Q. Now as to the soil in this made land up near this road, what kind is it?

A. It looks like good land to me.

Q. Was it suited to the growth of cottonwood trees?

A. I should say it was.

Recross-examination by counsel for defendant:

Q. Major, you mean to say that this river washed this land away and then restored it?

A. Yes, that is what I mean to say.

Q. Now, if the river was here in 1823, where would that bank be now?

A. I do not know where that bank would go to.

Q. You can understand the river bank running there in 1823, now at what later period would it pass from this situation?

387 A. I do not know; it has been in here long enough for cottonwood trees to grow two — three feet in diameter.

Redirect examination by counsel for plaintiff:

Q. You won't undertake to say that those trees commenced to grow before or after the cut-off?

A. No, sir.

(Cissna vs. State of Tennessee, pp. 28-45.)

(*Further Testimony of J. H. Humphreys, Introduced by G. T. Fitzhugh, Counsel for State of Tennessee. See Record Cissna vs. State of Tennessee, pp. 113-114.*)

J. H. HUMPHREYS, witness for the plaintiff, being recalled, testified as follows:

Direct examination by counsel for plaintiff:

Q. Major, I want to call your attention to this place marked old river and ask you if you ran this north line of the Huddleston tract?

A. Yes, sir, I did.

Q. When you cross old river to come down in here did you have to cross water?

A. No, sir.

Q. Is there any water in McKenzie Chute?

A. No.

Q. Is the land different from the made land?

A. No, I don't think there is any difference.

Q. Is it higher than the Centennial bank?

388 A. I do not know that it is.

Q. I will ask you if you found any high bank on 37, if so where?

A. That on the northeast part is a high bank, it is the original ground, has never been washed away.

Q. Did you find any indications of McKenzie Chute?

A. No sir.

Recross-examination by counsel for defendant:

Q. And so you have marked old river commencing right at the present river?

A. Yes. I have seen it right there.

Redirect examination by counsel for plaintiff:

Q. Did you run those lines by compass and chain?

A. Yes sir.

(Cissna vs. Tennessee, pp. 113-114.)

Deposition of J. H. Humphreys, Introduced on Behalf of Tennessee.

J. H. HUMPHREYS, recalled, testified as follows:

(Cissna vs. State of Tenn., 312-315.)

Direct examination by counsel for plaintiff:

Q. I will ask you, Major, if you have been to Covington, Tenn., since you have testified the other day?

A. Yes, sir, I have.

Q. Did you examine the records of the old certificates of survey made by the official surveyors of Tennessee of land in the neighborhood of Centennial Island and Island 37 in Tipton County?

389 A. Yes, I have examined them carefully.

Q. Did you compare the copies of the records of the certificates of surveys from which you made this map with the originals there in the Register's office in Covington?

A. Yes, sir, I did.

Q. Did you find them accurate copies?

A. Yes, they are.

Q. Are these copies from which you made this map the certified copies of the certificates of surveyors which have been introduced here in evidence?

(No answer.)

Q. Did these certificates and surveys give the meanders of the Mississippi River on the Tennessee side?

A. Yes sir.

Q. Do they contain calls for one another which enabled you to accurately construct a map from them?

A. Yes sir.

Q. Could you from them construct a map showing accurately the Tennessee bank of the river as it was at the time those surveys were made about the year 1823?

A. Yes, sir, I could.

Q. Is the map you have made and introduced in evidence here accurately show the bank of the river as it was in 1823?

A. Yes, sir, it does.

Q. I will ask you, Major, if this map you have introduced here is a correct exemplification of the surveys of record in the Register's Office at Covington as you found in your comparison?

390 A. Yes sir.

The defendant here objected to this question and answer for the reason that the record in Covington could only be proven by certified copies and the answer purporting to give their contents in a different way.

Objection was sustained and the question and answer ruled out by the court, to which plaintiff excepted.

Q. The black lines beginning at the northeast corner of the Huddleston tract and extending up and down the river is a true representation of the bank of 1823, as shown by these surveys, is it not?

A. Yes, sir.

Q. I believe you have followed these certificates and made your surveys and made your map as correct as you could?

A. Yes.

Q. Major, I will ask you as to the accuracy of platting one map on the other when there is no common point in them. Can it be done accurately?

A. Not without the same starting point, you must necessarily have some starting point in common or your work will be inaccurate.

Q. Did you survey the land in controversy in this suit for Mr. Stockley?

A. Yes sir, I did.

Q. Did you run by actual measurement the various lines you have designated?

391 A. Yes, sir; every one of them.

Q. In your survey through the woods of the land in controversy did you notice any marked difference at any place in the growth of the timber on any elevation of ground in the shape of a bank?

A. No sir; I never saw any and I tramped all through the woods, in running this north line here, I crossed the dry beds of three sloughs and ponds. They, of course, had slight banks. These were all the banks that I saw.

Q. Did you notice any marked difference in the growth of the timber on either bank of the ponds down which you ran this line which you call the middle of the old river and the boundary line of the State of Tennessee?

A. No, I did not; if there was it was too slight to be noticed.

Q. Did you notice any marked difference in the growth of timber over there on that made land any where?

A. No, sir; I did not, except that along Sandy Chute where the land is sandy the trees are scattered and smaller than back further where the land is good.

Q. I will ask you if you saw over there in that made land between Island 37 and Centennial Island on one side, and Dean's Island on the other, any banks except those of the sloughs and ponds, which you have spoken of?

A. No sir, I didn't.

Q. Did you see any bank or elevation of ground there that would lead you to suppose that it had once been the bank of the Mississippi River?

A. No, I did not.

392 Q. Did you see any difference in the growth of timber there which would show that there was such a difference between its size and age as would lead you to conclude that it marked what had formerly been the bank of the river?

A. I did not.

Q. You see here on this map of Mr. Bailey's where he has marked what he calls the Arkansas bank of the river of 1876. Did you see any bank or elevation of ground along there or difference of growth of timber along there?

A. I did not; there is none there. It is practically level ground. There is no difference in the growth of timber there.

Q. Do you think that you went over all the made land between 37 and Dean's Island?

A. Yes sir, a number of times.

Q. I will ask you if in running this line last week, which you

have marked on your map as the middle of the river, if you saw at any place just east of it, up here at the north, any bank?

A. Yes, there was a bank there which we ran a short distance from for a long space, probably a mile or more, that was the bank of the pond in here, and that bank is shown on the map. It was no higher or better marked than the bank on the other side of the pond. It was just the bank of that old pond there. We ran through it for a considerable distance.

Q. Have you drawn the map that I requested you to draw of that part of the Trigg tract left on the Tennessee side just after the cut-off?

A. Yes, here it is, it was drawn from the decree of the Chancery Court, the description in there — to Sledge, McKay & Co.

393 Plaintiff here introduced the small map spoken of.
(The Clerk will please insert it.)

Q. Major, I will ask you how far it is from the intersection of this section line to the northeast corner of the Huddleston grant on your map?

A. About one hundred and twelve chains.

Q. How far from the corresponding point there back to this 33 and 34 where they meet over to the north east corner of the Huddleston tract?

A. It is 182 chains.

Q. How far is it from the same section corner to the right here on the same scale, on Bailey's map?

A. Very near two miles. Two miles is a hundred and sixty chains.

Q. How far does your map show it?

A. 182 chains.

Q. This would be out further over this way than it is on that map?

A. Yes sir; it would come further over this way a distance of twenty-two chains.

Q. Then, the difference in the distance from Huddleston's southeast corner to the points named between the map and survey you have made and those made by Mr. Bailey is twenty-two chains, is it?

A. Yes sir.

Q. How much is twenty-two chains?

A. A little over a quarter of a mile.

Q. I will ask you what on your map the line that I now show you represents?

394 A. That is the Green B. Bateman tract on Island 36.

Q. What does it represent with regard to the left bank of the river of 1823?

A. It is the river at the time that the ground was surveyed there. I don't remember the time.

Q. This line here, then, represents the left bank of the river of 1823?

A. Yes, some time within that period; I don't recollect exactly.

Cross-examination by counsel for defendant:

Q. You do not undertake to say that that was the river bank of 1876?

A. I do not.

Q. Where, then, was the river of 1876?

A. I do not know.

Q. Is this pencil mark here on this map where that map shows the river of 1823?

A. Yes, within that line it was, about the period of 1823.

Q. If this was the bank of 1823, then, this could not have been the bank of 1876, unless the river had receded north?

A. No, it could not.

Q. Did the current strike the bank there and make off in this way to this point?

A. I could not say that it struck this bank. Let me explain, I do not say that the river did not recede there from my bank at the point you name and mark an accretion. I merely know nothing about it.

395 Q. Assuming it to have passed in this way what would you say?

A. Well, of course, assuming that it passed in this way, it might have cut in.

Q. The line which you have undertaken to draw here represents what in your judgment was the center of the river?

A. Yes, about that, some of this ground on the main shore was surveyed here in 1823, but on Island 37 the surveys were made in 1836 and '7. These copies of the records will show the dates.

Q. Right here?

A. Yes, sir.

Q. At the time you made this survey was there a negro along named Hight?

A. Yes, sir.

Q. At that time he was with you?

A. Yes, sir.

Q. The witness was here excused.

(Cissna vs. State of Tennessee, pp. 312-315.)

(Deposition of J. H. Humphreys, Taken in Case of State of Tennessee vs. Muncie Pulp Co. et al., Introduced as Evidence on Behalf of State of Tennessee in This Case. See Cissna vs. State of Tennessee, pp. 505-518.)

The next witness, J. H. HUMPHREYS, being duly sworn, says:

Q. 1. Where do you reside and what is your occupation?

396 A. I reside in Shelby County, Tennessee, and am a Civil Engineer.

Q. 2. How long have you lived in Shelby County?

A. I think I have been living in Shelby County since 1858.

Q. 3. How long have you been a civil engineer?

A. About fifty years.

Q. 4. During that time have you had much or little experience in surveying and platting grants and other field work?

A. Yes, about fifteen years of that time I have been engaged in land surveying exclusively.

Q. 5. Were you called upon at any time recently to make a survey of the original grants from the State of Tennessee covering what is now Centennial Island, and what was formerly the Devil's Elbow and Island 37 on the Tennessee side, in Tipton County, Tennessee?

A. Yes sir.

Q. 6. Did you also make a survey and map of Dean's Island and the Arkansas shore opposite Island 37 and Centennial Island?

A. Yes, I made such a survey in both cases as necessary for me to make a map of the ground as it existed at the time the lands were surveyed by the United States on the Arkansas side and at the time they were entered by persons on the Tennessee side.

Q. 7. That time was approximately the year 1823, was it not?

A. Yes, from 1823 to 1830.

Q. 8. I here hand you a map and ask you if that is a map made by you of the land in question?

A. Yes.

Q. 9. In making this, I see you have plotted out a number of entries and surveys on the Tennessee side, and especially on 397 Island 37. I will ask you if, in making these surveys, you had access to the original records in the Register's Office of Tipton County, Tennessee, and to certified copies of the original grants themselves?

A. I had copies, not certified by the Register, but I verified them by referring to the records, both in Shelby and Tipton Counties.

Q. 10. Then, as I understand you, this map correctly represents the various calls as they appear upon the record books themselves?

A. Yes.

Q. 11. Did you afterwards compare this map with certified copies furnished you by any one?

A. Yes, subsequently certified copies were furnished me by Mr. McSpadden.

Q. 12. At what place on the Tennessee side did you start in making your survey?

A. The northwest corner of the Benton 1,436 acres.

Q. 13. Do you remember who showed you that corner?

A. Mr. Massey, an old gentleman who is since dead, but who had previously been a surveyor in Tipton County, and Mr. Bateman, they called him Toney Bateman.

Q. 14. Was he an old resident of Tipton County?

A. Yes, born and raised in that neighborhood.

Q. 15. Did you find a marked corner at that place?

A. No, there was no marked corner there, but there were evidences of lines running in both directions,—that is fence lines.

Q. 16. Using that place as a starting point, were you able 398 to run lines and make surveys which convinced you that that was the northwest corner of the Benton 1,436 acres?

A. I had to take that corner on the authority of these two men.

There were no original corners anywhere in that neighborhood, and none on Centennial Island.

Q. 17. Did you find any corners on Island 37? Were any shown you there?

A. Yes.

Q. 18. What corners did you find on Island 37?

A. I first found a corner of part of the Potter tract, that had been conveyed to Stockley, and then run that line to the north line of the Potter tract, and then east to the northeast corner of the Trigg 100 acres. I was subsequently shown two other lines north of that, on the north line of the Hal-(?) 610 acres. They were marked lines, and I ran them together, so they intersected, and ascertained a corner in that way. I then ran from that down to the northeast corner of the Trigg 100 acres, and in that way verified the former survey, and located the corner of the Trigg tract at the same place.

Q. 19. Did you run a line from the Huddleston grant or the Bateman grant, or any other fixed corner on what is now Centennial Island, over to what was Island 37, to points which you ascertained as corners?

A. Yes, I ran from the northeast corner of the Huddleston grant, or rather from a point on the north line of the Huddleston grant, which I had located for the northeast corner, and ran from 399 this point a random line to the northeast corner of the Trigg 100 acres on Island 37. I did that for the purpose of ascertaining the relative position of Island 37 and Centennial Island or the Devil's Elbow originally.

Q. 20. Do you remember who showed you the lines and corners on Island 37?

A. A man by the name of Groves. He showed me one line. The last line that I run.

Q. 21. The corner which you say you found, was that a marked corner?

A. No, sir, that was in the field. That's the corner that I made by running from these other corners.

Q. 22. But I believe you said you found a corner of the Potter 640 acre tract?

A. I found a corner of Stockley's ground on the south line of the Potter 640 acres.

Q. 23. Did you make any surveys on the Arkansas side?

A. Yes, I made a survey for the purpose of locating the original bank in Arkansas, with reference to the Tennessee shore line.

Q. 24. At what point did you start on the Arkansas shore?

A. At the junction of Sections 11-12-13-14, Township 10, Range 9.

Q. 25. Was that a marked corner?

A. Yes, that was marked, but there was no original witness trees. That corner was marked with an iron bar.

Q. 26. Taking that as a starting point for the purpose of running lines on the Arkansas shore, did you find any other monuments?

400 A. Yes, I ran a mile south and found a marked tree there, and two miles east and found a marked tree, not of the original trees, but an iron stake; then half a mile south of that I found

another iron stake. Then I proceeded that line on south until I intersected a line which I had run across the bed of the old river from the northeast corner of the Trigg 100 acres, and in that way I connected the Arkansas survey with the Tennessee original survey. I then used the township plats for plotting in that territory over in Arkansas.

Q. 27. Did you have copies of the field notes of the survey made by the U. S. Land Office at the time these plats were made?

A. Yes, the field notes were on the plats.

Q. 28. Were these plats and field notes furnished and certified by the U. S. Land Office?

A. Yes, they either came from Washington or Little Rock, I don't remember which, from the Land Office.

Q. 29. In making these surveys, did you do it in a careful and painstaking manner?

A. Yes.

Q. 30. Were you satisfied with its correctness when you had run the many lines of which you have spoken?

A. I saw no reason to doubt it.

Q. 31. And the map which you produce, and which I marked as Exhibit "A" to your deposition, is a map as the result of this survey, aided by the grants and entries of the State of Tennessee, and the notes and plats from the U. S. Land Office? Is that correct?

A. That is correct.

401 Q. 32. Then to your best judgment, that map represents the true conditions of the Mississippi River as it ran at the period you have named, to-wit, between 1823 and 1830. Is that correct?

A. Yes, that is right.

Q. 33. Who showed you the stake on the Arkansas side, which you used as the beginning corner?

A. A man by the name of Fonvill, who lived in the neighborhood.

Q. 34. In addition to this, did you make a survey for the purpose of plotting the Mississippi River as it then flowed? I mean at the time of the cut-off, and is that represented on this map, and if so, how?

A. The Mississippi River as it existed at the time I made the survey, is represented here by blue lines and are marked "present channel of the Mississippi River."

Q. 35. Is that present channel correctly shown on that map?

A. The north shore of it is correctly shown. That was the only shore I had anything to do with.

Q. 36. You did not undertake to correctly show the north bank of the river?

A. No. In running through the Benton tract, I located simply one point of that bank.

Q. 37. Do you remember when you made this survey?

A. November 1901, is the date on the map, and that was the date of the survey.

Q. 38. You have a chute here which you mark Sandy Chute. Is that correctly located?

402 A. Yes, it was located by actual survey.

Q. 39. This part which is marked Mississippi River, representing the river of 1823, lying north of Sandy Chute at the time you made the survey, what was the character of that country there? Was it covered with water?

A. No, it was all dry land, except a few ponds, and covered with timber.

The examination of Mr. J. H. HUMPHREYS, resumed on Monday morning, March 20th, 1905:

Q. 40. In your last answer on Saturday afternoon you said that the old bed of the river was dry except a few ponds, and was covered with timber. Now what was the character of that river bed?

A. It was nearly flat, with some undulations in it as are generally found in alluvial lands, along the Mississippi River.

Q. 41. Quite a good deal has been said about a bank which is distinguishable from the other undulation, and which has the appearance of being an old river bank, in that river bed, and all of the land to the east of that bank is on a higher plane than the land to the west of it. Did you or not find any such land?

A. I did not find any ridge which seemed to me to have been the bank of the Mississippi River. On the contrary, the largest body of water I had to cross, and the deepest, was just against the Arkansas shore of the river.

Q. 42. And that was the out-let of Barney Chute, was it?
403 A. I think so.

Q. 43. These ridges, which you found, went down, or dipped on both sides, did they not, the land being low on both sides of the ridges?

A. There were some of them wider than others, and some of them nearly flat for a considerable width on top. Some of them would rise up from the low ground by a very easy slope, and some of them more abrupt. There is a considerable ridge between Campbell's Lake and the body of water next to the Arkansas shore.

Q. 44. You mean the ridge which lies east of Campbell's Lake is the only ridge which you saw that looked to you as though it might have been a permanent bank of the Mississippi River? Is that correct?

A. I can't say that it looked to me like it might have been the permanent bank of the Mississippi River. I think it was rather higher than any other ridge that I crossed, but I don't consider that any evidence that it was ever a bank of the river. We see a sand bar accumulate and form an island in the middle of the river.

Q. 45. Were the banks on either side of Middle Pond higher or more pronounced than the other ridges you found in the bed of the river?

A. They were not.

Q. 46. Did you plot on the map, in red lines, the lands described in the pleadings in this cause?

A. Yes, I think I did.

404 Q. 47. Did you survey that tract of land?

A. I surveyed and plotted on the map in red lines the tract beginning at the northeast corner of the Trigg 152 acre tract; and running north 72 degrees and 20 minutes east, 36 chains; thence south 17 degrees and 40 minutes east, 77.86 chains; thence south 33 degrees and 20 minutes east 64.04 chains; thence south 49 degrees west, 42.50 chains to the northeast corner of the Huddleston 2,000 acre grant; thence with north line of Huddleston grant south 82 degrees west 34 chains; thence with Huddleston's north line north 71 degrees west 15.32 chains; thence north 8½ degrees west, 66 chains to the southeast corner of M. Potter's 640 acre tract, on Island 37; thence north 55 chains to the northeast corner of John Trigg's 100 acre tract; thence east 18.75 chains to the beginning point. This tract includes the Trigg 152 acres, the Trigg 37 acres, and part of the Chalmers 135 acre tract, about 20 acres of the last named tract.

Q. 49. How does that tract which you have surveyed and plotted lie on the Tennessee side, or west of the Middle of the Mississippi River, as it flowed at the time the grants on the Tennessee side were made, and at the time the surveys in Arkansas were made?

A. Yes, it does. The east line of this tract was laid down as being midway between the original shore lines.

Q. 50. And in making the east line of this tract, you undertook to follow the middle of the river at the time of these surveys, did you?

405 A. Yes.

Q. 51. A good deal has been said about the size of timber on this tract, and that timber which lies in the old bed of the river to the west of this tract. Now state what was the result of your observations in regard to the timber in the bed of the river?

A. I don't know that I noticed that the timber was different in one part of the old river bed from another, except that it was larger on the ridges than it was on the low land.

Q. 52. And this you noticed in the several ridges scattered through the bed of the old river?

A. Yes, except that the ridges between Campbell's Lake and the Arkansas shore, where I crossed it, appeared to have been put in cultivation at some time, and the top of it had no timber on it.

Q. 53. How do you account for the fact that on this ridge the timber was larger than in the low flat places between the ridges?

A. I have little doubt that it is due to the fact that the ridges were first above water, and the timber begun to grow there earlier than it did at other places, which were submerged longer.

Q. 54. What is the difference between the method of surveying used in Arkansas, and that used in Tennessee?

A. As far as I know the method is the same, but in the original surveys in Arkansas, the surveyors used a different variation of the

needle from that used by the Tennessee surveyors. Also Arkansas was laid off by the United States Government according to 406 what is known as the Mansfield System, in ranges, townships and sections. Tennessee was laid off in grants of various sizes, ranging from 20 acres to 5,000 acres, grants from the States of North Carolina and the State of Tennessee. The earlier grants were from the State of North Carolina, and the later grants from the State of Tennessee.

Q. 55. How was Island 37 surveyed? In the U. S. Government survey of Arkansas, or in the survey of Tennessee?

A. It was surveyed in grants from the State of Tennessee, dating back from 1823 to 1830.

Q. 56. Then as I understand you, as far back as from 1823 to 183- (?), the State of Tennessee claimed Island 37 as a part of its domain, and made grants of the same?

A. They made grants, and I take it for granted that it claimed it.

Q. 57. The people now living on Island 37 and owning land there, claim under these grants do they not?

A. Yes, and claim to be in the State of Tennessee, and have a magistrate over there of Tipton County, Tennessee.

Cross-examination by Mr. Ewing:

Q. 1. You indicated by the red lines, the middle of the river as it existed in 1823, did you not?

A. Well, at about that period. Some of these shore lines were made about that period. They were all made about that 407 period, I stated in my direct examination that the shore lines were made from 1823 to 1830.

Q. 2. You commenced your survey by laying off the lines in controversy, at the point on the Tennessee bank of the river, about 1823?

A. I think the Huddleston grant was made about that date.

Q. 3. That point is approximately on the north bank of Sandy Chute?

A. Yes.

Q. 4. In 1876, prior to the cut-off, was that point which you used as a starting point, under water or not?

A. I think it was.

Q. 5. In 1876, and prior to the cut-off, had not the Trigg 37 acres disappeared?

A. I can't say certainly as to that. My impression is that it had. The appearance of the ground there indicates that it had been washed away and filled up. Here is plainly the shore line before the cut-off, right along here and pretty well under that road.

Q. 6. You indicate a point which is west of the Trigg 37 acres and a part of the land which is Chalmers' and others 135 acres, do you not?

A. Yes, it leaves (leaves) a part of the Trigg 152 acres, a small part of it in the northwest corner which has plainly not been washed away.

Q. 7. Now the 131 acres laid off on your map, as southwest of the

408 river, where it becomes McKenzie Chute, had also disappeared in 1876, had it not?

A. That is my understanding.

Q. 8. And if that had been true, the point which you used as a beginning point, necessarily was in the river of 1876, was it not?

A. Yes, if that be true it was.

Q. 9. Have you any reason to doubt that that was so?

A. None at all.

Q. 10. You could not have run this line in the fall of 1875, could you?

A. I think not.

Q. 11. The survey which was made, only became possible by reason of the cut-off, whereby the water was diverted from the old channel into the present channel. That is true, is it not?

A. Yes, the reformation of the ground there results from the cut-off and the changes in the river subsequent to the cut-off.

Q. 12. In other words, without the cut-off, you could not have run these lines?

A. No, I could not. If I did I would have had to establish points in the sand, as I understand. Personally I don't know anything about these things.

Q. 13. You know as much about that as you do about any of these lines which you have drawn on this map?

A. No, I don't. When I said I don't know as much about these lines, I meant that I did not personally know as to where the encroachment of the river had stopped before the cut-off, of my own knowledge.

409 Q. 14. You mark old river on your map. Do you think you have marked it reasonably correct?

A. I do.

Q. 15. There was very little caving to the west of old river, after the cut-off, was there not?

A. I want to say that old river is merely a name for the depression through which the water flows before the water gets up to the top of the bank at the present time. This is all there is in the name.

Q. 16. You don't know whether that depression which you mark "old river," was the place where the river ran just preceding the cut-off, do you?

A. No I don't recollect it. I don't think it did, altogether I have just said that the north bank of what is now called old river is plainly the limit of the encroachment of the river in the Potter 640 acres. There is no indication below the old McKenzie chute that this was ever the old river.

Q. 17. Will you mind saying where you think the river ran in 1876, if it don't run through what you think is old river?

A. My information up there is that the river broke right across here, somewhere not far from the present connection of what is marked "old river," with the present channel of the river. That is the impression that I gained from people who knew something about it.

Q. 18. Suppose somebody were to ask you to mark the middle of the river in 1876—

410 A. I could not undertake to do it.

Q. 19. And this map is not drawn with a view to locating the middle of the river in 1876 at all?

A. Not at all.

Cross-examination by Mr. R. G. Brown, counsel for the Muncie Pulp Company:

Q. 1. Maj. Humphreys, this map of yours is drawn to scale is it not?

A. Thirty chains to the inch.

Q. 2. Will you please measure from the common corner of Sections, 32-33-4-5 to the point shown on your map as to the Tennessee bank of old river, and state how far that is upon your map?

A. I don't understand that as the Tennessee bank. It is the west bank of what I marked old river. About 176 chains, and 176 chains is 11,616 feet.

Q. 3. That is something over two miles, is it not?

A. Yes sir.

Q. 4. Is not that the little blue line on your map that you have marked as the west bank of what you denominate old river, the old bank of the Mississippi River, just prior to the cut-off?

A. I do not see any reason to suppose so.

Q. 5. How high is that bank above the territory immediately east of it?

A. At that point I don't think it is any higher.

Q. 6. Please state how much higher is this west bank of what you have marked as old river, or above the territory immediately to the east of it, at a point where the blue line intersects with the 411 south line of what you have marked as McKenzie Chute of 1823?

A. You asked the question about a piece of ground I was on. I run that line. I don't believe that there is any difference, say any considerable difference, between the bank there, either. It had been washed away on both sides.

Q. 7. Do you mean to say that the blue line which you have marked as the eastern bank of what is known as Centennial Island, and which is indicated by the words, "H. W. Stockley" on your map, is not higher than the land immediately to the east of it?

A. It is very much higher south of Sandy Chute, but north of Sandy Chute I don't think it is any higher.

Q. 9. How much *lighter* (?) than the contiguous territory is it at the point south of Sandy Chute?

A. The bank south of Sandy Chute is pretty low in the east side, and I should guess it was 10 to 12 feet higher on the west side there.

Q. 10. Is it not a fact that the same altitude of 10 or 12 feet is found entirely along that bank, being the east line of what you have marked as McKenzie Chute, down to the point that you have marked Huddleston's 2,000 acres?

A. I think not, though I guess it gradually diminishes a little as you go northward on it, but the reason why these two banks are nearly on a level down here is that the bank on the east side of old river at that point, is very much lower than it is south of Sandy Chute.

Q. 11. At the time that you made this survey, which I understand to be in November, 1901, was there any water in the place that you have marked on your map as old river?

412 A. I would not undertake to say. I have dated that map

November, 1901, but I was up there more than once before I made this map, and I don't undertake to say whether there was water in old river in November, 1901. The first time I went up there, I don't know the exact date, but it was somewhere not far from that date, the river was high enough to put water through old river, and it was barely fordable on horseback.

Q. 12. At that time was there any water over the land immediately to the east of what you have marked as old river?

A. No.

Q. 13. That land then, immediately to the east of the old river, was dry?

A. Yes.

Q. 14. And the part that you have marked old river, was barely fordable on horseback?

A. Yes.

Q. 15. In other words, the bottom of the track which you have marked old river is from 3 to 4 feet lower than the land lying immediately to the east of old river?

A. Yes, and more than that. Much more than that from every part of it north of Sandy Chute.

Q. 16. Was there any water at that time in Sandy Chute?

A. No.

Q. 17. You have testified in your direct examination in regard to the timber which you found in the bed of the Mississippi River between the Tennessee shore and the old original shore of 413 Dean's Island. I will ask you what is the character of the timber which you found on the land immediately to the east of the point on your map which you have marked as old river?

A. Up near Sandy Chute the timber is good sized, but it gradually diminishes in size as you go north to the drain marked on the map, which leads into old river.

Q. 18. What do you mean by a good size? What diameter was the timber at the point where I now indicate to you, being the curve of Sandy Chute into Old River?

A. There were some trees up there two feet in diameter.

Q. 19. Were those trees found immediately along the bank of what you have indicated as Old River?

A. They were on what you might call the high bank. Upon the level.

Q. 20. Is it not a fact that all along Sandy Chute from the point you have marked as the northeast corner of Huddleston's tract, along the curve of Sandy Chute, and old river, up to the southeastern

point of Trigg's 100 acres, there is a low willow flat, and that none of the timber along there is anything but small willows and small cottonwood?

A. No, that is not the fact. That 131 acres is higher ground and has good timber on it. After you pass further north, the timber is of the character that you describe.

Q. 21. Did you measure any of those trees?

A. No.

Q. 22. In going east from the Tennessee bank to what you 414 have marked as old river, over to Dean's Island, did you or not find at the point 77 chains east of the Tennessee bank on a projection of the section line between 33-24-5-4-, a distinct bank higher than the inland to the west of it?

A. Two of them.

Q. 23. You found two banks at that point?

A. Two banks between those points.

Q. 24. I did not ask you about finding two banks between the points, but whether or not you found a high bank at the point 77 chains from the Tennessee bank?

A. I don't know. I never was on that ground.

Q. 25. You mean to say that you were not on the ground at the point 77 chains east of the Tennessee Bank on the projection—

Witness asks: What do you mean by the Tennessee bank?

Mr. Brown: I mean the bank, the west bank of what you have marked as old river.

A. There is a ridge around there.

Q. 26. How much higher is that ridge than the land immediately to the west of it?

A. I don't know. There is a ridge to the west of it and then another ridge.

Q. 27. I am not asking you about another ridge. I am asking you about this ridge. Is or is there not a distinct bank at the point 77 chains east of what you have marked on your map as the Tennessee bank of old river?

A. There is a distinct ridge there, yes.

Q. 28. How much higher is that ridge, if you wish to call 415 it a ridge—

A. It is a ridge, surely.

Q. Than the land immediately west of it?

A. I don't know how much higher it is. It is distinctly higher though.

Q. 29. Did you observe the character of the timber on the top of this ridge?

A. I never went along that ridge until about three or four months ago, about four or five months ago. The timber was very largely cut off there, but I think there was some good large timber on it, as compared with some other places.

Q. 30. In running your line, which you have marked as the middle of the channel of 1823, did you confine yourself merely to that line?

A. Yes.

Q. 31. You didn't go either to the east or west of it?

A. That line was not run with any reference to the topography of the land.

Q. 32. What character of timber did you find along the line which you did run?

A. As far as the middle pond is shown the line runs through low ground, with bushes in it, and no timber. After leaving middle pond, and between there and the corner of the tract, there was pretty fair timber.

Q. 33. The court will not be advised as to what pretty fair timber means. Will you please give the size of the timber in inches?

416 A. No, I won't for I don't know.

Q. 34. Have you ever had any experience in observing the growth of cottonwood timber?

A. I don't know, I would not like to say I had not had any, but I have never been a *denison* of the bottom, and I don't think I have had a large amount of experience in that line.

Q. 35. Your observation then, in regard to the timber on this tract was merely casual, and is not given as the testimony of an expert in timber?

A. No, I don't claim to be an expert in timber, but I know how a big tree is when I see it, approximately.

Q. 36. On the edge of this ridge, which you say is 77 chains from the east of the Tennessee bank, did you or not observe either trees or stumps that would measure from 40 to 45 inches in diameter?

A. I am certain that I never saw a tree any where in the bottom that would measure that. If you found any such trees they are exceptions.

Re-examination:

Q. 1. Maj. Humphreys, you speak of the 131 acre tract being high and the timber being large. Is that the tract which is bounded on the north and east by the original boundary line of McKenzie Chute, and on the south and west by Sandy Chute and old river?

A. Yes.

Q. 2. Now the ridge which Mr. Brown has asked you about as being 77 chains east of old river, that ridge is west of Middle 417 Pond, is it not?

A. Yes sir.

Q. 3. Is the timber on that ridge as large as the timber on the 131 acre tract to the south?

A. I could not say. As I said before, the best of that timber and the most of it, had been cut off before I ever followed it.

Q. 4. But to your best judgment it was no longer than the timber on the 131 acre tract?

A. As I said, I would not undertake to say whether it was or was not, but nothing I saw left any such impression on my mind, as that it was larger.

Recross-examination by R. G. Brown:

Q. 1. You state that at the time you went up there to make this map in November, 1901, or shortly prior to that, the timber had been cut off of this 131 acres?

A. I never said anything of the kind.

Q. 2. When was it that the timber was cut off of that?

A. I never said it was cut off of that at all. I said it was cut off the ridge.

Q. 3. In your deposition given in the case of Stockley vs. Cissna you testified directly in regard to the size of this timber, did you not?

A. I don't know. I don't think I testified any more definitely than I have in this case. I certainly never claimed to have measured it.

Q. 4. I read you from page 51 of the record in the case of 418 Stockley vs. Cissna, in the U. S. Circuit Court of Appeals, and

I will ask you to examine that paper and state whether or not you gave this evidence? "Q. Do you think the river came further over this way from 1823 to 1876? A. This ground here shows that it had all been in the river up here to this road. Q. Now in order to make it perfectly plain, all this land in here has at one time been under the Mississippi River? A. Yes, sir. Q. I will ask you if you know about how long since it has been under the water? A. I don't know anything of my own knowledge, except from the size of the trees I saw there. Q. How old did these trees look to be? A. Some of them were nearly three feet in diameter." Did you not give that testimony?

A. Let's see what that applies to. I think it is possible that on that 131 acres some of the trees might have been three feet in diameter. I don't see anything in this question, or the answer either, to locate the point you were talking about.

Q. 5. Will you please locate where abouts on that tract you found the trees 36 inches in diameter, about which you testified?

A. I did not measure any of them. I think that that was a general answer, which applied to all bottom, which I was familiar with.

Q. 6. Did you understand those questions there, to have been put to you in regard to the land which was covered by the Mississippi River before the cut-off?

A. Yes sir.

Q. 7. You were testifying then that on the land which was occupied by the Mississippi River, at the date of the cut-off 419 these trees, in 1901, measured 36 inches.

A. No, I didn't testify that. I did not claim to have measured them, and when I said some of the trees were three feet in diameter, it was merely an estimate of mine and that being the limit the presumption is that they were numerous, those three feet in diameter.

Q. 8. If you found trees on this island which was the bottom of the river in 1876, that by 1901 had grown to 36 inches, would it shock your idea of the eternal fitness of things, if by 1905, they had increased to 40 and 42 inches?

A. I would hardly expect that they would increase that much in that period of time.

Q. 9. You meant to state that this 131 acre tract in the bed of the river at the point where the cut-off took place in 1876, did you not?

A. If you apply it to the old river, I will say that the present condition with what is marked Old River, on this map, with the present channel of the Mississippi River, is in the neighborhood of where I understand the original cut-off took place, though I have no definite information on the subject.

Q. 10. Will you please lay your rule about where you state the cut-off took place?

A. I should say it was about there.

Q. 11. That is a southwesterly direction from the point where 35 chains are marked on the bank of the river of 1823, down towards the intersection of the Old River with the present channel?

A. I don't know but that where those figures 35 chains are 420 marked was in the river before the cut-off.

Q. 12. Do you think that the direction was across the point indicated, and in that direction?

A. I have no information as to the direction, and I don't know anything of my own knowledge about it at all. It is just an impression I obtained from people who were there when the cut-off occurred, and I never attempted to locate it on the ground in my life.

Q. 13. Do you think that Sandy Chute, as marked on the present map, was north or south of the river as it ran in 1876?

A. I should say it was probably north, but I don't know. I don't know what there was there in 1876.

Q. 14. Your map and your testimony, and your survey, are addressed exclusively to the period between 1823 and 1830?

A. Except the lines shown in blue and red, which indicates that I found on the ground when I made the survey.

Q. 15. The lines in blue indicate the present river and lines?

A. Yes.

Q. 16. The red lines represent a survey made from a point on the bank of the river in 1823, out to a point in the river of 1823, and is not supposed to deal with the river of 1876 at all?

A. No, sir.

(W. A. Cissna vs. State of Tennessee, pp. 505-518.)

421 (Further Testimony of J. H. Humphreys Introduced on Behalf of State of Tennessee. See Record Cissna vs. State of Tennessee, p. 689-693.)

State of Tennessee vs. Muncie Pulp Co. et al.

The deposition of Maj. J. H. Humphreys, witness for the complainant in the above styled cause, taken at the office of Messrs. Carroll & McKellar, Memphis, Tennessee, this the 7th day of July, 1909, by consent of counsel for W. A. Cissna, subject to exceptions for relevancy and competency only. The leave is reserved to Mr. Ewing if he desires to cross examine Maj. Humphreys.

The said first witness being duly sworn, deposed as follows:

Direct examination by Colonel Carroll:

Q. 1. Maj. Humphreys, when did you first survey that area of land and water indicated on what is called in the reports, the Humphreys map of 1823?

A. Ans. The exact date I made the survey I do not now recall. I made the survey for Mr. Stockley, and that was some time before his suit was instituted in the Federal Court, against Mr. Cissna.

Q. 2. I show you the 60th page of 119 Tennessee, upon which is reproduced the Humphreys map showing the conditions of the river in 1823. Please look at it and say if you recognize that map?

A. Yes sir, the outlines of the map are very similar to the map I made.

Q. 3. That is what purports to be a copy of your map. You will find a point on that map almost due north of the east line of Hall's

422 100 acre tract at which four sections corner in the State of Arkansas 11, 12, 13 and 14. Who pointed out that corner to you when you made that map?

A. A Mr. Farnville.

Q. 4. What did you find there to indicate it was the old established corner?

A. Well, I found simply a corner stake there, and a sweet gum tree, but the sweet gum tree was not one of the original witness trees to the corner.

Q. 5. What did you find at the northeast corner of Hall's 100 acres on the old bank of the river; what sort of point did you find, if any?

A. I never was out there.

Q. 6. Who pointed that out to you?

A. I don't know anything about that corner. I never was out there. That was merely included in there from the grants.

Q. 7. Do you recall meeting a man named Groves, in your survey?

A. I think I met some man up there but I do not recollect his name. It was not the northeast corner. It was the northwest corner.

Q. 8. Do you recall that when you made that survey a man by the name of Groves, J. A. Groves, pointed out to you a corner on the northeast line which was the northwest corner of the Hall 100 acre tract?

A. I do not recall that. Here is the corner he showed me. Then I ran down there, and then up here, and then back to that corner.

Q. 9. As to the map that is before you, that is the map that you made. The Supreme Court, in its opinion, in this case, has 423 stated that it is of the opinion that the true and correct line is midway between the banks of the river as they existed in 1823, as shown by the map of Maj. J. H. Humphreys. Since you gave your testimony in the case of Stockley vs. Cissna, which was

determined by the Supreme Court, and upon appeal from Chancellor Cooper at Covington, and in this case, which was determined by the Supreme Court in an opinion delivered by Mr. Justice Shields, have you had occasion to make any further survey of any part of that territory, and if so, when?

A. Well, the only survey I made up there, I made for Stockley last winter. I just surveyed that 131 acre tract then.

Q. 10. When you were up there last winter, did you or not put monuments so as to show Stockley's land, and also to show the property outside of Stockley's land, between the banks, of 1823, and the middle thread of the river of 1823, covering the Stockley grant of 1901?

A. Yes, I marked three corners which are in the middle of the river, and they were the corners of a grant to Stockley.

Q. 11. Where did you put those monuments and what character of monument did you put there?

A. An iron pipe.

Q. 12. Where did you put them?

A. Well, I put them at the southeast corner of the grants, and at a corner in the middle of the east line of the grant, and another at the northeast corner of the grant all of which were in the 424 middle of the river.

Q. 13. Then you laid off Stockley's 131 acre tract?

A. There is another tract. That is part of the Huddleston grant. There is another grant.

Q. 14. Take the map in front of you, and give the riparian owners along the banks of the river, all the lands restored by the evolution of 1876, where would the western boundary of the old bed of the river be traced along your map? I mean the old river bank?

A. There is the bank shown on the map.

Q. 15. That is what I understand. Then if you begin at the Huddleston northeast corner, and the land immediately between the bank of 1823, and the middle of the thread of the river of 1823, following the shore line as indicated by your map is a part of the old river bed, and all the land west of the bank line shown by your map, is a part of the old river bed, and all of the land west of the bank line as shown by your map is restored land belonging to whoever owns the shore, is that correct?

A. Yes, sir, it is restored land, and I suppose belongs to the parties who own the shore.

Q. 16. Then by taking your map and taking, for instance, the northeast corner of Hall's 100 acre tract, all of the land between that corner, and the opposite Arkansas bank would be a part of the old Mississippi River?

A. Yes, sir.

Q. 17. And all that part of the land west of the middle 425 of the river, and between the shores of Tennessee on Island 37 and the middle thread of the river, would be the old bed of the river?

A. Yes sir.

Q. 18. What is the distance across from Hall's 100 acre tract according to your map, to the Arkansas shore?

A. That measures about 60 chains.

Q. 19. Major, how much of Trigg 151 1.2 acres had caved into the river prior to the evulsion?

A. I have lost my map. I have no map now. My original map showed the banks when I made the survey I have not got it, and it does not seem to be here.

Q. 20. Had the bank been caving on the Tennessee shore along from the Love's tract down to and including this small 37 acre tract of Trigg?

A. Yes, I think it had very largely caved off, and caved nearly up to the 157 acre of Trigg. It was only a few chains from there to the bank.

Q. 21. On the west and the north banks of Island 37, was the caving pretty perceptible?

A. That is something I do not know anything about. You know all this was platted from the Grants. I never was up there. I never was any further up than the northeast corner of the Trigg tract. The shore land, as shown on the map, was established by platting the grants.

Q. 22. You did not plat any of the Hall land?

A. No sir.

426 Q. 23. Were you ever up there?

A. Well, I crossed over there by road, when I went over once or twice. That corner was right on the banks of the Arkansas shore (indicating).

Q. 24. Do you recall whether or not that part of the 151 acre which is immediately north of Trigg's two tracts had caved?

A. I know a large part of that had caved. I think nearly all of it had caved.

Q. 25. In making the survey, did you come across wire fences?

A. Yes, sir.

Q. 26. Here is a map that seems to have been made by a man named Martin. I wish you would examine it and see if you recognize what is what he calls Cissna's wire fence?

A. It seems to me that is what they call Sandy Chute there. Cissna did have a wire fence along the north bank of Sandy Chute extending down and along the bank of the stream called Old River, which connected over near Stockley's place. That is where I recollect to have seen the wire fence. Possibly there are other places I do not recall.

Q. 27. On this map, Cissna's wire fence seems to terminate close to Huddleston's northeast corner?

A. Yes sir.

Q. 28. Assuming that map is correct, and shows the wire fence as it runs from a little east of Open Lake down to about Sandy

427 Chute, how much of the Old River bed on the Tennessee side was included in that wire fence?

A. Well, I think it is all included and more too. It runs

right across the Huddleston grant there, and I think that wire fence runs into these other grants on Island 37.

Q. 29. In other words, Mr. Cissna, just run a wire fence around the old bed of the river, along the other lands west of the Old River?

A. Yes sir, other lands which had been washed away and restored.

Q. 30. How much of that land did you travel over in surveying the 1,050 acres, the Stockley grant?

A. How much of that land, do you mean of the old river bed?

Q. 31. Yes.

A. Well I went all the way around that grant.

Q. 32. Was the timber pretty generally cut on it?

A. Yes sir.

Q. 33. How much of the timber was left standing?

A. Well, there were places where it was pretty well all cut.

Q. 34. What was the character of that timber?

A. Well, originally there was some fine timber there.

Q. 35. Cottonwood?

A. Cottonwood generally.

Q. 36. When you first went to survey for Stockley, sometime in 1901, how much timber was there?

A. There was a good deal of timber along there. Cissna had cut a great deal over there along the tram road they had in there.

That was laid on one of the highest ridges in the bottom.

428 Q. 37. When you were last there, how did the condition as to the timber compare with your first trip?

A. Well, in places a very large part of the timber had been cut out. There were other places in which it had not been cut. I could hardly form any idea as to the proportionate amount.

Q. 38. In other words, there was a perceptible difference between the amount of timber there, that had been cut between the two trips?

A. Yes sir.

Q. 39. You have no occasion to change your statement in any regard about the accuracy of your survey?

A. No, sir, none at all.

(See Cissna vs. State of Tennessee, 689-693.)

429 The State of Tennessee introduced as evidence in this case the deposition of O. K. Joplin, said deposition having been taken in Stockley vs. Cissna and used in Cissna vs. Tennessee (Cissna vs. Tennessee, pages 45-69; 112-113; 310-312):

O. K. JOPLIN, witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination by counsel for plaintiff:

Q. Please state your name, place of residence and business.

A. O. K. Joplin; live at Corona Landing; am a farmer.

Q. Have you ever been engaged in the river business?

A. Yes, I was for quite a while.

Q. About how long?

A. About twenty-eight years.

Q. Over what course of the river did you run in 1876?

A. I was making three trips — week from Memphis to Osceola, Ark., in 1876.

Q. What was your business in running the river at that time?

A. I was captain of the steamer Osceola Bell.

Q. Were you familiar with the channel and course of the river?

A. Yes, sir, I was.

Q. I will ask you if it was a part of your business to be familiar with the river?

A. Yes, I studied the river and got pilot license just to be able to tell where I was at any time.

Q. I pass you this map introduced by Maj. Humphreys and identified by him, and ask you if it accurately represents the river when you first got acquainted with it?

A. Yes, this is all right in here and through 37 is all right.

Q. Does the course of old river north represent the river
430 as it was?

A. Yes, practically speaking, except Dean's Island had settled down a little there.

Q. It was the main channel of the river along around there?

A. Yes, this was the chute of 37 and here was the river.

Q. What was the width of the chute of 37?

A. A little less than one-fourth the width of the river.

Q. Then this was the main river?

A. This was the river right here.

Q. Which one of these streams did the boats navigate?

A. That would probably apply to the stage of the water.

Q. Could you navigate McKenzie Chute?

A. Oh, yes; but it would depend upon the draft of the boat.

Q. I will ask you what was the distance right across the corner of the elbow?

A. Right around one mile.

Q. I will ask you if you noticed the land marked Mrs. Stockley?

A. Yes; it was right there at Corona.

Q. I will ask you if Mrs. Stockley had a landing on the river just before the cut-off?

A. Yes, on the south side about the middle of her farm near Corona.

Q. Can you point it out to the jury?

A. I would say it was here (pointing to map).

Q. Now Captain, if it was about the middle of her farm how far was it north of her south line?

431 A. A quarter of a mile from the south line of the Huddleston tract, this had caved off quite a lot.

Q. From what direction?

A. It caved from the north.

Q. Will you take your pencil and indicate to the jury the north bank of the river by Mrs. Stockley's land just prior to the cut-off?

A. The river came down this way and then around the curve this

was gradually caving in here. Her landing was on the north bank of the river.

Q. This marked Jenkins one thousand acres was there any landing place?

A. We made three or four landings there; Brown's Trigg's, Massey's, and then we stopped at Jackson's in the woods.

Q. Was that woods on the Huddleston grant?

A. Yes, on the south side.

Q. Do you know that the river had caved up to Mrs. Stockley's south line?

A. Yes sir.

Q. Follow the course of my finger and see if it practically follows the north bank of the river at that stop?

A. Yes, that is the river bank and that is the chute that I remember.

Q. Here is a place marked Walker's directly west of Mrs. Stockley's was there a landing place?

A. We rarely ever made that landing from the fact that it was wood land there.

Q. Did the river at that time wash Trigg's south line?

432 A. We had a landing that we called Trigg's or Massey's landing between the Stockley and the Brown landing about a mile apart.

Q. Did the river at that time wash the south line of the Huddleston tract?

A. That was my opinion of it.

Q. Do you live in that region?

A. Yes, I live right there at Corona landing.

Q. How wide is the river there?

A. About a sact (?) mile.

Q. Do you know these lands the enclosed part?

A. The enclosed parts of those lands are on what we called the Walts or the Bateman land.

Q. Here is marked a tract of land called the Bateman 155 acres land. I will ask you if that was still there prior to the cut-off?

A. Yes, sir; I used to get off there to visit a girl.

Q. Was this land there washed up by the cut-off?

A. Yes, there were two farms destroyed by the cut-off in here.

Q. Can you point out on this map where this land was?

A. This place here at that time was known as the Trigg property, then as the river receded south it carried off here what was known as the Red Brown property, and it took a great deal of Mrs. Stockley's land; there was about twelve or fourteen hundred acres destroyed in about three or four days.

Q. Can you point out the caving bank?

A. There was a heavy caving going on at the head of the bend, this water would come across from Dean's Island and cause a heavy caving; there was very little caving going on at the upper 433 side of Devil's Elbow.

Q. I will ask you what was the width of the river there?

A. That was an extremely wide part of the river, I should think over a mile.

Q. Let us get down to Mr. Ewing's old river; I will ask you if that was in the river over there?

A. No, sir; that was growing cotton there.

Q. Assuming right there to be the bank of 37, where did the chute of 37 come out?

A. Assuming this is 37 here, it just went out into the river right here.

Q. Was the north line of the Trigg tract in the woods?

A. Yes sir.

Q. Has there been any caving on the east bank of what is known as Centennial Island since the cut-off?

A. The caving stopped on the head of Centennial Island, within a few days after the cut-off.

Q. I will ask you if there has been any caving on the Tennessee side since the cut-off?

A. That is gradually caving; never has quit since the cut-off.

Q. Was there any sand bars in that section of Dean's Island?

A. There was no sand bars on the foot of Dean's Island.

Q. Were you in the neighborhood when the cut-off took place?

A. Yes, I was above there.

Q. Tell the court and jury what you saw there?

A. I went up the river on Friday night and when I passed 434 up on Friday night the water was all over the country.

The next night on coming back when we reached Golden Lake fifteen miles above there, I noticed that the water had fallen. I came on watch after supper and stayed until twelve o'clock; I did not understand this; the river was rising every where when we left Memphis. I knew this land was under water when we went up, and the river was rising at all points above there and the water was all over this landing; now there was several inches of the bank out, I could not understand it. The next landing we made was Pecan Point; when we went up this land was all under water, now there were eight or ten inches of the bank out. At this point the pilot, Tom Foster, came on watch. I said, "Hellow Tom, what is the matter with this bank here, the water is a foot lower here than it was last night, look at the bank out there." He gave me the laugh and wanted to know how many drinks I had had. The next landing was Dean's Island at Andrews; when we went in there the pilot called me out and said, "Captain, look here, something has happened; look at that bank out there." We did not know what it was and went on down the river. We got down to Thomas', and they told us the cut-off had gone through; as we passed on down the river we heard the noise of the water, and before we knew what we were about we were drawn almost into it. If we had not had a fine stout boat we would have been swept through it. You see there had been such a change that we did not know our bearings,

and had gone down the old channel until we were almost 435 in the place before we knew where we were. We turned her head almost directly across the river, and were barely able

to pull out. The land was caving there at a great rate and the insu-tion was something terrific. We went on down the chute of 37 around the elbow and got to the foot of the cut-off just about day-light, and laid there just to look at it; we were there five or six hours, and called up all the passengers.

Q. How wide was the cutt-off at that time?

A. About 150 yards.

Q. Was it caving still?

A. Oh, my goodness, it was caving like everything.

Q. Would it go off in large pieces?

A. Oh, yes, it caved back about 400 yards in about two and a half hours.

Q. Would the land go in large pieces at one time?

A. Yes, sir; it would slope back and take in ten or twelve acres of ground at one time?

Q. Was it what you would call sudden?

A. My goodness, yes.

Q. You came back on Monday night, did you?

A. Yes sir.

Q. How wide was it at that time?

A. About three quarters of a mile, about the usual width of the river.

Q. Friday night you had gone up?

A. Yes sir.

Q. Sunday morning you came back?

A. Yes sir.

436 Q. How wide was it then?

A. About 150 yards when we first struck it, but it grew in width very rapidly.

Q. When you came back on Monday night was it still caving?

A. Yes, it was still caving a little, but had reached about the full width of the river.

Q. Did you see any negro houses or other buildings or—in the river?

A. Yes, I saw all the old Trigg negro quarters go in the river.

Q. Just tell what you saw in that particular.

A. Well, the darkies were all there in great trouble trying to get their plunder out and we saw a great many amusing as well as sad things. You would see a darkey pick up some of his plunder, such as a bed tick, and run off and lay it down about a hundred yards and run back for something else, but before he could get it out of the house he would have to run and the house would go in with all his stuff, and before he could get back to what he had laid down may be that would go in and he would be in a fix. The darkies were all in great excitement and running about like something wild trying to save their plunder. They lost most all of their stuff and in some instances barely saved the children. It was a terrible sight.

Q. Did the land cave in such large pieces that you could see it?

A. Why, whole acres went in at a time.

Q. You could see it then?

A. Yes, I could both see it and hear it; it made a great noise.

Q. Did you have sufficient knowledge of the Trigg place
437 to make an estimate of the number of acres of land that went in the river?

A. We called it twelve hundred acres; eleven or twelve hundred acres farm, it all went in except about a hundred or hundred and fifty.

Q. About how much of the land went into the river at the time of the cut-off there?

A. Well, the Massey place went in too, and some of Mrs. Stoekley's and the Ponf place. I suppose that it would aggregate more than fifteen hundred acres all together.

Q. Did that cave into the river between the time when you first saw it on Saturday night and when you next saw it on Monday night?

A. Yes, you understand the cut-off had about reached its full width by Monday night. After it widened out it did not cave so fast, but the river at the upper end has been caving on the Tennessee side and receding ever since.

Q. Will you take Maj. Humphreys' map and point out to the jury about where the cut-off was when you first saw it as you came down?

A. (Witness takes the map.) It was right here; it came right across Trigg's place this way and struck the river below Brown's Landing.

Q. In what direction did it run when you first saw it?

A. Northeast to southwest, across the elbow.

Q. About what was the date of the cut-off?

A. In the early spring of 1876. I think it was in March, but don't know the exact date, but as well as I remember it was 7th.

Q. Were you running that trade the year before the cut-off?

A. Yes sir.

438 Q. Had you noticed any indications of the cut-off in the year 1875; if so, state what it was?

A. In the spring of 1875 this water in coming around the elbow was much lower on the lower side of the neck than it was on the upper; the water poured through there and caused it to cave very rapidly until the river got high enough to cover all the land so there was no fall. You see this made it cave very rapidly where the water *fc-*; (*fell*) over the lower bank into the river. After the water fell in 1875 I noticed that it had taken a chute out of there straight across the field, it cut a ditch about twenty feet deep and thirty to thirty-five wide and one hundred and fifty yards long. It was cut out as clean as if you had put a gang of Irishmen there with spades and wheelbarrows. You could not notice this ditch until after the water fell. We had been expecting a cut-off for several years.

Q. Did the cut-off make through there where the ditch was?

A. Yes, right there; but the ditch was at the lower end of it.

Q. Was that the commencement of the cut-off?

A. Yes, that was the occasion of the cut-off.

Q. Was the land across there perfectly level?

A. Yes, it was a level field.

Q. You have stated that when the water on the upper side of the neck reached the level of the bank it was lower than the bank of the lower side of the neck?

A. Yes sir.

Q. How much lower would it be?

A. Eighteen inches or two feet until the river rose high
439 enough for the water to pour across in sufficient volume to bring the river to the same level.

Q. Can you explain how it was that the water on the lower side of the neck came to be lower than it was on the upper side?

A. Yes, but that was only true as long as the river stayed in its banks. When it rose high enough for the water to pour in sufficient volume to raise the level of the river below it was just the same. The reason is that the Mississippi River has a fall from two to four inches to the mile, and it was about fifteen miles around the river to the elbow from the upper side of the neck to the lower side. While straight across the field from river to river was just a little over a mile, so, of course, the level of the river below would be lower than that above.

Q. Had the bank on the lower side of the neck been caving much?

A. Yes, it had been caving rapidly ever since I knew it; the river had been going northward and Brandywine Island has been shifting in the same direction. Brandywine Island was just across the river.

Q. Then it had been caving there on the south side of the neck?

A. Yes, very rapidly for several years.

Q. Had it caved any on the shoulder of Dean's Island and in the bend down there by Thomas?

(No answer.)

Q. In what direction from the Huddleston or Trigg east line was Thomas'?

440 A. It was a mile and a half or two miles up the river in the bend.

Q. What was the width of the river at about the place where Trigg or Huddleston's northeast corner is shown on Maj. Humphrey's map?

A. The river was extremely wide there, probably over a mile at an ordinary stage of the water; it got down towards three-quarters when the river got very low.

Q. How wide was the river up here at the northeast corner of the Trigg 100 acres on Island 37; Stockley's northeast corner now?

A. It was about three-quarters of a mile in a good stage; it came down to nearly a half mile in extremely low water.

Q. When you have given the width of the river did you mean the width of the stream of the water or from high to high bank on either side?

A. I mean the stream of water.

Q. How far was it up there on 37 across the river from the high bank on the Tennessee side to the high bank on the Arkansas side?

A. Possibly two miles, but then you know the willow flat and mud bar came in there on the Dean Island side.

Q. Was that a sand bar and mud bar such as you ordinarily find on the bank of the river?

A. Yes, you find it occasionally up and down the river.

Q. Was this flat and mud bar covered in time of high water?

A. Yes, but you understand it did not take high water to cover that, much less than bank full would cover it.

441 Q. Was this mud flat and river bar a part of the river bed?

A. That depended on the stage of the water, just above a good ordinary stage would put them under, while in low water they would be a considerable distance from the river.

Q. Describe the vegetation that grew on these flats?

A. On this mud bar nothing but the willows I have mentioned.

Q. What was the size of these willows?

A. They ranged all the way from mere switches where they started to grow near the water, to six, eight or ten feet as you got near the big timber, I mean from six to ten feet high.

Q. Was this big timber back on the main shore of the island?

A. I suppose so, I was never back there, just a line of big timber back there.

Q. How far was it from the waterbed that these willows on the mud flat began to grow?

A. You could not tell; that depended on the stage of the water. Sometimes they were as much as fifty yards from the water and then again they were under the water.

Q. Were you present with Maj. Humphreys when he ran this red line as shown on his map?

A. Yes, I was along in the party.

Q. Where would you say that line was run in regard to the bank that marked the limit of the bed of the river on either side? The bed includes the stream of water, and sand bar and the mud flats from high bank to high bank, on either side, as it was just before the cut-off?

442 A. That depends upon what stage of the water. You mean if you take extreme low water it would be nearly to the water's edge on the other side; of course, the higher the stage of the water the wider the river. At something less than bank full the whole flats over there were covered and the line would not be half way.

Q. But suppose the bed of the river to extend from high bank on the 37 side to the high bank on the Arkansas side, that is the bank covered with a heavy growth of timber, to which side would the line marked on Maj. Humphreys' map as the center of the river be nearest to?

A. If anything it would be nearest to the 37 bank, but I think as near as I can recollect it is about midway between both; but if you count it back to the line of high timber on the Arkansas side that was much further off.

Q. About how far is that line of heavy timber from the Arkansas edge of the water in low water?

A. Maybe something like a mile.

Q. What was the width of that bar?

A. It varied in width, it was from 100 to 200 or 300 yards.

Q. Back there that was a high bank, was it?

A. Yes, away back there was a high bank.

Q. Was there any water over there by it?

A. Yes, Campbell's Lake is over there now.

Q. Will you describe the stream, bed and channel of the river just before the cut-off?

A. In coming up from Shawnee Village we hugged close to Dean's Island mud bar, then changed over to the Tennessee side. You see over there by Dean's Chute was the main steamboat channel. After we crossed over the channel lay over on the Tennessee side until we passed around above Dean's Island.

443 Q. How long did you run in that trade after the cut-off?

A. Until 1879.

Q. How long after the cut-off before you quit navigating the main channel of the river around there?

A. I am not sure, but it was either the first or second season; you see as soon as the cut-off got well established it became slack water around there and got full of snags and other drift. It shoaled rapidly and we could not find the channel easily, in fact we had no channel, we leaded going and coming every trip. You see after the cut-off was made the government no longer pulled the snags out or kept it cleared out in any way as the main commerce of the river followed the cut-off and only the boats that wanted to make Shawnee Village and the other landings around there tried to go through. It was dangerous on account of the snag, and you were liable to get your boat stuck up because of a shifting channel. There was water enough but there was no channel.

Q. Did you notice the appearance of the made land as it appeared above the water there?

A. Yes, I did.

Q. Can you trace just where the first land you noticed came out, show it on the Humphrey's map there?

A. That sand bar in the flat there on the shoulder of 37 towards Shawnee Village made rapidly up the river along the bank of 37, until it got to what is marked old river here near Centennial 444 Island, then it changed east in the shape of a V, making along the north bank of Sandy Chute towards the east, till it got up here in these sand flats nearly to Dean's Island, where a big sand bar rapidly rose up and spread out towards Dean's Island. This sand bar is that sand flat over there now. This first V-shaped land was just like a levee had been thrown up. This changed the best channel of the water over towards Dean's Island; we would skirt around it and get into the river up there by Captain Andrews'. The channel over there soon got to be very dangerous and we abandoned that part of the river.

Q. When did this towhead down there appear?

A. It was the first land that appeared after the cut-off. It came up as a lump of blue mud shortly after the cut-off.

Q. Was that on part of the old Trigg place that washed away?

A. Yes sir; it did not all wash away. I think it must have washed off to a very shallow depth because this lump of blue mud was there when we first tried to go around there and appeared the first low water after the cut-off.

Q. Did you notice this land that formed there in the old bed of the river east of 37 and the old Trigg place on the main shore and on part of the Trigg place, that washed away as it appeared above the water and matured from the mud bar into the soil?

A. Yes, I continued in that trade for two or three years after that.

Q. Describe the appearance of this land as it appeared above the water.

A. Well, there was a towhead there, separated from this
445 other land by what you have got marked here as Sandy
Chute, over here between 37 and Dean's Island, this V-shaped piece come up that I told you about which ended in this big sand blow which spread out up here to Dean's Island, the other land in here appeared above the water in flats with sloughs and ponds scattered about over it, then the willows grew up and the cottonwoods, until you could not keep track of it.

Q. How long after the cut-off was it before any of this land that Mr. Stockley is suing for appeared above the water?

A. Something like three years, maybe a little longer though it had shoaled over there before that time so that you could not get through there with any sort of a steam boat.

Q. Was this sand formed in the usual manner that said bars and mud flats are usually formed in the Mississippi River?

A. Yes, just like the rest of them, it soon became slack water over there and a sediment and sand was deposited and gradually filled up the river, but it first got full of snags and old trees and all sorts of drift.

Q. Was this land formed gradually and slowly or was it formed in such a way that you could see it as it was being formed?

A. Why, of course not; it was formed by the sand and deposits carried by the water.

Q. Was this land formed in such large pieces or so suddenly that you could tell when it was being made?

A. Oh, no, it was just slack water over there, and the mud and sand and sediment held in suspension by the water settled down and
446 made the land gradually. You could not see any land at all until two or three years after the cut-off, or maybe longer, when it first appeared above the water. I don't think much of it had appeared above the water when I quit the trade, still it was fairly out.

Q. State the manner in which it grew or increased in height after it appeared above the water?

A. Well, the willows soon began to grow and covered it and at each high water a little mud would be deposited on it and it gradually increased in height and the cottonwoods and willows grew until they are no longer trees.

Q. Is the land still growing in height?

A. Yes, I think after each high water it is a little higher by reason of the mud that is settled on it.

Q. After you quit steamboating there did you go back into the neighborhood frequently?

A. Not so very frequently; my wife's people lived near there and I went back there occasionally.

Q. Do you live near there now?

A. Yes, I live right there at Corona.

Q. Do you ride frequently over this land which Mr. Stockley is suing for?

A. Yes, I ride over there two or three times a week.

Q. From your knowledge of the country, I will ask you if this piece of land marked "B" on Maj. Humphreys' map was on the main shore of Tennessee before the cut-off?

A. Yes, before the cut-off, it was a part of the old Trigg tract on the main Tennessee shore; it extended a little over a half 447 mile up there north of Sandy Chute.

Q. Did you see that go into the river?

A. I saw that go into the river myself on that Sunday morning.

Q. I will ask you whether or not you know that old river running around there between the Huddleston, or Trigg tract on the main shore and 37 on one side and the Dean Island and the main shore on that side was the boundary line between Arkansas and Tennessee.

A. Yes, it was; all the people on 37 and Centennial Island pay taxes in Tennessee.

Q. Do you occupy any official position in the State of Tennessee?

A. Yes, sir; I am a Justice of the Peace.

Q. Is Island 37 in your district?

A. Yes, sir; I try cases over there.

Q. After the cut-off, which was the main channel of commerce of the river, did it go through the cut-off, or around this old river on Maj. Humphrey's map between 37 and Centennial Island; by this, I mean the boats that carried the trade of the river the usual and ordinary steamboats, coal fleets, grain barges, and all other vessels ascending and descending the river?

A. There were more large steamboats then than now. They all followed the cut-off; only light draft boats went around old river.

Q. Did the coal fleets go down old river?

A. No, sir; coal fleets and barges went through the cut-off.

Q. After the cut-off how did the boats reach McKenzie Chute from the cut-off?

A. They went through old river as it is marked on this map, only the light draft steamers went around there.

448 Q. How long after the cut-off did these small boats continue to go through old river and McKenzie Chute?

A. That depended on the stage of the water. In three or four years they had to quit there in a low stage. When the water was up you could go through there up to within eight or nine years ago. You can go through there now in high water unless the willows have grown up so high that they would bother you. I think the "Ed

Foster," which drew about eighteen inches of water, ran through there for six or seven years after the cut-off.

Q. Did you notice the caving of the banks of the river?

A. Yes, sir; I have always noticed that very closely.

Q. State whether or not this old river, just before the cut-off lay next to the high bank on 37. By old river I mean McKenzie Chute, as Maj. Humphreys has it there or the Chute of 37, as you probably knew it.

A. We called it the Chute of 37; it lay right there by the high bank of 37.

Q. Is that north bank of 37 still there and is the remains of the old river still by it?

A. Yes, sir; they are right there now.

Q. I will ask you if this old river, as it is marked on the map of Maj. Humphreys, running along Stockley's east bank of Centennial Island, from the main river to the old chute of 37, was that there before the cut-off?

A. No, sir; that was part of the old Trigg land; some of it was in cultivation and part of it was in woods.

449 Q. Then this old river, so-called, is really a new river?

A. Yes, sir; it was made at the time of the cut-off. You see the full force of the current struck the head of Centennial Island and caved rapidly back west to where the bank is there now. This relieved the pressure as soon as the cut-off got wide enough to let the river through, it then quit caving on Centennial Island, and shortly afterwards this towhead appeared and this place called old river was left between it and Centennial Island here by Stockley's field, it really runs through the Trigg place.

Q. What is the character of this soil down here near the river?

A. It is a sand bar along near the river, after you got back on the towhead it is good soil. Stockley has a field there in cultivation.

Q. What is the character of this soil here along the bank of Sandy Chute?

A. It is sandy, but it is high; the cotton woods on it right along there are not very large, and are scattering.

Q. What is the character of the soil back here on this larger tract of land just east of 37?

A. It is good black loam.

Q. Take old river in its present condition, how long in the year does the water run through there?

A. I think two and a half or three months.

Q. At what stage of the river does the water go through there?

A. At about twenty-four feet on the Cairo gauge; that would be 17 to 20 inches less at the head of Centennial Island.

Q. What is extreme low water mark?

450 A. It is 51 9-10 at Cairo.

Q. What is it at Memphis.

A. I think it is 36.

Q. That makes a difference of about twenty feet in the two gauges?

A. No, it is 37 feet at Memphis, which makes a difference of less than fifteen feet.

Q. Is there any vegetation growing in old river now?

A. It is all grown up now in cottonwood and willows in spots.

Q. Does not Mr. Stockley use it as a pasture now?

A. Yes, sir he does.

Q. Were you acquainted with Mr. Smith's place on Island 37, owned by Mr. Stockley now?

A. Yes.

Q. In crossing on the road from Centennial Island to 37, is that a dry crossing in old river?

A. Yes, with the exception of a little stream that runs out of a pond and a little strip of sand there.

Q. Is that a public road represented here on this map of Humphreys?

A. Yes, that is a public road.

Q. In going up the bank is this made land here claimed by Mr. Stockley in sight from the Smith place?

A. Yes, sir, it is.

Q. What is that made land covered with?

A. It is covered with trees.

Q. Is there any remains of the old bank there?

A. Yes, sir; the road runs along on top of the bank there;
451 Powell's lake is right there by it.

Q. Is that made land right next to Stockley's field?

A. Yes, sir; right there by it.

Q. Is it right there against the bank?

A. Yes, sir; you go right down off the bank to it.

Q. What sort of place is that Powell's Lake?

A. Oh, it is a pond there by the bank may be two hundred yards long and between fifty and a hundred yards wide in places, and where it is not dried out is all the way from two to eighteen inches deep, the cows walk across it.

Q. Is that a public road on the head of 37?

A. Yes sir.

Q. In entering the Smith place is that made land right there plainly in sight against the bank?

A. Yes, sir; it is right there by the bank.

Q. And the Stockley field runs right up to it?

A. Yes, except the road is right there on top of the bank.

Q. I will ask you if this land claimed by Mr. Stockley has made there since the cut-off?

A. Yes, sir; it has made there since the cut-off.

Q. Was this land, that is showed here on Maj. Humphrey's map to the east of the old bank or bank there washed away before the cut-off?

A. Yes, sir; the river lay right there against that bank.

Q. Was that old bank the present bank there on 37, the bank of the Mississippi River at the time and before the cut-off?

452 A. Yes, sir; the river ran along there by it.

Q. Then that present high bank remained as it was and marks the bank of the river before and at the time of the cut-off?

A. Yes sir.

Q. Did any of Island 37 wash into the river at the time of the cut-off?

A. Oh, no; the cut-off relieved 37 and drew the water away from it. You see before that the river had swept around there and struck the head of 37 and caused it to wash, part of the water going here through the chute and part of it going around by Shawnee Village. The cut-off relieved this and made slack water all in there.

Q. Which was the main channel of the river navigated by the great majority of boats?

A. The main channel was this old river here to the east and north of 37 between it and Arkansas, the general run of boats usually followed that course, but in a good stage of water they could and sometimes did come through the Chute of 37. You see that was nearer and saved time unless you wanted to make the landing around there in Arkansas. The Chute of 37 was not good navigation in low water.

Q. Will you describe the north bank of the Trigg Place and the Chute of 37 as it was before the cut-off?

A. It was a gradually sloping sand bar and mud bar. It was covered with woods back to some distance.

Q. Was it a caving bank along there?

A. No, as I have said it was a sand bar there and mud flat, and seemed to be growing out into the chute every year. The bank on the 37 side of the chute was caving and the river was gradually receding northward every year.
453

Q. Was there a caving bank up there at the northeast corner of the Huddleston or Trigg tract where the Chute of 37 went out into the river?

A. No, there was a bar there.

Q. Was it caving any where along this east bank of the Huddleston tract?

A. No, after you got up a little ways from the chute the bar and the bank was a bluff or shelving; it may have washed some, but it was not caving to any notable extent, as I recollect it. Further up it was caving and up in the bend there it was caving very bad.

Q. You see here on the Humphreys map this place marked old river here; I will ask you if this last bank of Centennial Island here by Stockley's field was in the same place before the cut-off as it is now; in other words, was that the bank of the Mississippi river?

A. My dear sir, that was away on the other side of the Trigg place there. It was a mile from there due east to the bank of the river. The whole place lay in between there.

Q. About how far was it from this old road marked here on the Humphreys map as the east boundary of the Stockley place due east to the bank of the main river?

A. I did not know much about that road at that time. I only

knew the river, but it was close on to a mile and a half in my judgment.

454 Q. Has the bank of Centennial on the east here caved any since the cut-off?

A. This bank in old river, no. The pressure on it was relieved as soon as the cut-off got wide enough for the river to go through, and it is fixed about where it is now within a very short time after the cut-off, say in a few days. The pressure was relieved from the head of Centennial Island by the caving of the Tennessee bank and the river receding southward.

Q. Has the Centennial Island south bank caved much since from, say the first year of the cut-off to the present time?

A. Not right there at the head of old river. A small sand bar formed there shortly after the cut-off and is there now, but down there at Corona Landing it has caved back two or three hundred yards in the last four or five years.

Q. That is where this road touches the bank, is it?

A. Yes, right there at the landing.

Q. Before the cut-off, was there any high bluff bank on Dean's Island to the west looking toward the Trigg place?

A. If there was it was not in sight from the river, there was a wide sand bar there.

Q. Describe the sand bar as to its width and the trees or other vegetation growing on it?

A. The width depended upon the stage of the water; in low water it was nearly a half mile back there to the woods on the high bank, but the greater part of the bar lay to the south of Dean's Island.

Q. How wide was this bar to the south of Dean's Island before the cut-off?

A. It was much wider to the south than it was any where else; close on to a mile, I reckon, in low water, or quite a mile.

Q. Well, describe the vegetation growing on it?

A. Well, away back there towards Andrews a clump of willows had sprung up my recollection is and may be some where growing along away back by the bank, but it was mostly simply a wide barren sand bar.

Cross-examination by counsel for defendant:

Q. Are you any connection with Mr. Stockley, the plaintiff in this lawsuit?

A. Yes, I married his sister.

Q. Do you live up there?

A. Yes, sir.

Q. Have you any interest in this suit?

A. None whatever; but I have taken some interest in it.

Q. Do you know about where the channel of the Mississippi River was in 1823?

A. No, sir; I do not.

Q. You were old enough to run a steamboat in 1875, were you not?

A. Yes, sir; I was born in 1852.

Q. You were 23 years old then?

A. Yes, sir.

Q. You are familiar with the surveys of the river there; do you know what these dotted lines indicate, does it not indicate the channel of the river?

456 A. I suppose that is what it was intended to indicate.

Q. Was that the channel of the river down there?

A. No, the main channel of the river went around here.

Q. But the man who made this map is a government man, you might be mistaken, might you not?

A. No, sir; I made this mark to show where the channel was.

Q. Now if the river ran here at one time as this represents, it might not have run here in 1823?

A. I could not tell you about where it ran in 1823.

Q. By what sort of process was this land in here by Dean's Island made?

A. It was made by this channel here becoming slack water.

Q. How far did it make?

A. From the foot of the south here down the river it made in a narrow strip along here by Dean's chute.

Q. Did it make on any other part?

A. Yes, sir; it made on that sand bar the blue mud I expect 150 to 200 yards.

Q. Tell us how the channel of the river ran when you commenced to run the river beginning at Pecan Point; and in about the year 1876?

A. Beginning at the head of Dean's Island then we hugged the Tennessee bank around through the bend until we got up here towards the head of 37. Then we cut across to Dean's Island and kept on the Arkansas side of the river down through the bend towards Shawnee Village.

Q. Let me get that exactly right, I am following the river 457 down here. I simply asked you to show me the channel of the river?

A. All right, sir.

Q. Take your pencil and run right around down there?

A. That was a sand bar there, here commenced the channel coming right around in here.

Q. The land Mr. Stockley claimed is on the Arkansas side of the channel, is it?

A. No, sir; that is it; it lies right against the Tennessee bank.

Q. The river of which this is the channel went down through in here?

A. Part of it did at a certain stage of the water.

Q. At what stage of the channel in 1876 would this land that Mr. Stockley claimed be under the main channel of the river?

A. At an ordinary stage.

Q. Why was not this the main channel of the river all the time?

A. Yes, it is very plain to me that this is the channel of the river, but — asked me to point out the steamboat channel, which I did.

Q. Well, the land that Mr. Stockley claims is part of it in Arkansas, is it not?

A. Oh, no; the river went all over there; I was only showing you the channel, Mr. Ewing, I was explaining to you that the channel turned over here to Dean's Island.

Q. You have said that this was the main channel of 1823; how did it get to be there?

458 A. No, I marked on this map the bank of 37 and this river is the old chute of 37.

Q. In 1876, before the cut-off, what was the channel of the river, from this bank?

A. Why, it lay right here.

Q. What was the depth of the water then over there near the left bank where the land is now that is claimed by Mr. Stockley in this lawsuit?

A. Why, that would be a matter of guess work, but I should say about fifteen feet along in here.

Q. The left bank was right here and the Arkansas high bank was right here; the river lay between these two points, did it not?

A. Yes, this was the high land of 37, and here was the high land of Dean's Island.

Q. The water coming down here struck here and fell off down there?

A. The water coming down here part of it came through 37 chute and some of it struck here going across here and headed around Dean's Island.

Q. Take this point here, Captain, where was that point with regard to the bed of the river in 1876?

A. My idea is that it was covered with water.

Q. But it was not covered at the time of the original survey, was it?

A. I could not tell you, sir; I think this was near the boundary line.

459 Q. This being the main channel, the left bank of the river of 1876 would be there, wouldn't it?

A. Yes, sir; you would come along here and here was the bank of 37, the right bank proper was away further over here on Dean's Island.

Q. You would draw that as the Dean's Island bank, would you?

A. This was Dean's Island; the river came around here.

Q. But your mark is here?

A. I tried to make the mark where you told me.

Q. Mr. Joplin, I will ask you to make a pencil mark at the place where the low water mark—on the Dean's Island bank in 1876 prior to the cut-off?

A. It would be back in here.

Q. You understood the question, didn't you, Captain; I want to know where the low water was in 1876?

A. It was right along here.

Q. I will ask you if you have not marked it further over than you did awhile ago?

- A. I can not say what the other mark represented.
- Q. Mark the low water on the other side, on the Tennessee side.
- A. That was the bank right there.
- Q. Across this place between your two low water marks extended the river, did it not?
- A. Yes, at medium stage.
- Q. That is at the ordinary stage?
- A. Yes, sir.
- Q. Now mark the lower stage as it extended on the Tennessee bank in 1876?
- A. All right, sir; (Here witness makes the mark).
- Q. I want it positive where the low water was on the Tennessee bank in 1876?
- A. Well, I stopped, Mr. Ewing, right where it is.
- Q. Is this blue mark here it?
- A. Yes sir.
- Q. Now, Captain, if you can mark the low water mark on the Arkansas side and the low water mark on the Tennessee side, how wide was the river at this point?
- A. It was about three-quarters of a mile at low water.
- Q. On last evening you had marked the blue line here as the east boundary line of the Mississippi River at a period of low water?
- A. Yes, sir.
- Q. Was that a caving bank right there?
- A. Yes sir.
- Q. From over there this was a caving bank?
- A. Yes sir.
- Q. At all stages?
- A. It caved most at high water.
- Q. That is what you call a caving bank?
- A. I not only call it so; it is a caving bank.
- Q. What do you call a caving bank?
- A. A suddenly washing bank.
- Q. I will ask you to take this blue pencil and mark over here from this point to the point opposite this point the left bank of the Mississippi River as it existed in 1876?
- A. I think your bank there is the bank.
- Q. I will ask you to draw the distance from the low water line on the right bank to where you have already drawn down to the river?
- A. (Here witness makes mark.)
- Q. Now, which is the medium line of low water that you drew last night?
- A. This is the medium line.
- Q. Down the other bank from this point here on up the river?
- A. Well, there is no Tennessee bank, this crosses the chute.
- Q. I am asking you to show it as it existed in 1876.
- A. (Here witness makes a mark on map.)
- Q. The main channel between two low water marks would be between the two lines here and would make the red line here in the channel?

A. There is a great deal of difference between the river and the channel of the river, the channel came in over here on Dean's Island.

Q. The river turned over to the Arkansas side?

A. Yes, sir.

Q. The question I asked was whether the current of the river changed from the Tennessee side to the Arkansas side along the curve?

A. I think it did.

Q. Well, you have described the low water mark on both the Tennessee and Arkansas banks in 1876, prior to the cut-off, now I will ask you to show the jury where it broke in—

A. Where I first laid my pencil it came down this way and 462 turned down here a little over this way.

Q. Now what you have marked there is your idea of the way it broke and the way the river was running here in a westerly direction, when it turned in a southwesterly direction?

A. This caved off up here.

Q. Show with the pencil where you have marked the red lines?

A. It is marked with a red pencil on the Humphreys map with double red lines.

Q. Now, Captain, I will ask you if this is the map you made at the right bank of the river in 1876?

A. No, it is the current of the main river.

Q. What, didn't you draw it a minute ago?

A. You drew it there yourself a minute ago.

Q. This is the channel line, is it not so?

A. That is the channel line there.

Q. Follow that red line on that way.

A. If I understand you I am trying to draw the channel of 1876.

Q. The river turned right here and made this cut-off and then run around this way and then cut straight off this way?

A. Yes, after it struck the head of this island.

Q. Now, how did the river leave this current here and suddenly turn and run this way?

A. It just cut across this way.

Q. Now mark the high water line along here?

A. If you will allow me to explain, this mark is the channel of the river as I understood it when drawing the Tennessee bank.

463 Q. Now, I am still asking you about this medium current, where did the river leave this part here.

A. This cut-off commenced on the south side and caved up here further into the river.

Q. Was the cut-off over this way?

A. It struck the head of this point of land drawing the whole course of the current in at the head of this island in here.

Q. This river at some time turned down this way, and the river now runs along over here?

A. The cut-off made the change.

Q. Where did the river turn when it made the cut-off?

A. The main river came in this way.

Q. You have made a mark on this map to show the river in 1876; how did the water get into the cut-off, as you have marked it?

A. As near as I can understand that question when the cut-off was made the water lay against the Tennessee bank, before the cut-off below in this Devil's Elbow it had worked up in here.

Q. But the river then turned down here?

A. The river commenced to turn down here.

Q. Was the old current and the new the same?

A. You understand that you have asked me for the bank of the river and for the channel of the river. Continuing this on a little further you crossed Sandy Chute to the bank of the river as it was then.

Q. You have given there the places of the cut-off, the jury must know how the river ran through it; I mean if the current of the river ran where that red line is, how did it get off here where 464 you have marked? I want you to give the bank.

A. I am tracing the bank now.

Q. What is your blue mark?

A. Why you asked me to trace the channel.

Q. Did you make this line yesterday, or to-day?

A. You asked me to mark out the channel of the river.

Q. This blue mark is the channel of the river; didn't you make this line as the low water mark here, and didn't you commence at that bank and run this blue line here; is that where this blue line went, if not, tell me what this blue mark was?

A. Why, this blue mark was the bed of the river.

Q. The question I asked you is what you put that blue mark there for? What do you understand that blue mark to represent?

A. You have interfered with a whole lot of it.

Q. Do you know where the river turned in this way?

A. Here is where it is, right here.

Q. Commence right here, Captain, and mark the current of the river.

A. (Witness indicates as asked.)

Q. Captain, does this red line represent the current of the river after the cut-off?

A. At the time of the cut-off.

Q. Please follow the channel from that point and mark what represents the course of the current just after the cut-off?

A. I am trying to explain to you that this river bank is not out here where this blue mark is.

465 Q. After the cut-off mark the course of the river within three or four days after.

A. Do I understand that you want me to tell you the way the land lay, the river was divided on the head of Centennial Island, part of it came through the cut-off.

Q. What was the course of the current?

A. This water hit the head of this island and the cut-off began right there in this shape while this water began to recede over this way.

Q. The river came right down this way and took a new course right down this way?

A. I have answered the question; you asked me to describe the condition of the cut-off and the course of the water through the cut-off.

Q. And this was the course of it?

A. Yes sir.

Q. Now, then, if that was the bank down there, what was this red line?

A. This was the channel, Mr. Ewing, that was cut through there when I first saw it.

Q. Haven't you got the bank shifted further to the left than you did previously draw the low water mark?

A. No, sir; I drew the mark you told me to; I have never understood what you were talking about.

Q. What did you have in mind when you drew these two red lines?

A. I had the cut-off in mind.

466 Q. I will ask you what fact you had in mind when you pointed the way the boats run?

A. That is what you asked me.

Q. When you drew that red line what did you mean?

A. That was where the steamboats navigated.

Q. I mean by the channel the way the main current run?

A. The steamboats first run one side and then the other.

Q. This red line that you drew here is what you drew as the channel of the river?

A. I drew that as the ordinary channel.

Q. I will ask you now if this is the channel?

A. I drew that Mr. Ewing, as the route the steamboats run prior to the cut-off.

Q. Now then, give us the route they run after the cut-off?

A. About two days later most of them went through the cut-off and run over in this direction.

Q. That current did not run straight?

A. No, sir; they would pull around north and south.

Q. How long had the water run the way that you have marked this line?

A. I think I told you on yesterday that it changed and widened and after that the water commenced to gradually recede towards the south.

Q. How long had the water run that way?

A. Mr. Ewing, it widened just this way, it crossed this neck to the head of Brandywine Island, which was over there. It 467 now reversed itself and run five miles up the river and struck the bank and commenced to curve south and went through Foggleman's chute.

Q. Now, in backing out around there which way did it go?

A. As I stated, it pulled off in this shape.

Q. There is the Mississippi River in that country there and you

have made marks to show which way it went. I ask you why the river ran over there?

A. When this cut-off was made the first direction it took was across this land, it took it about 36 hours to get its full width, this was a caving bank, along this island, at any time.

Q. But after all of that the river settled down?

A. It has never settled down yet, it is coming over south every day. We used the lead there for two months.

Q. After the two months which way was it going? Commence right here and mark the current of the river at the end of the two months.

A. As a steamboat man it would be impossible to tell you exactly.

Q. Now, the river ran right down this way?

A. Yes, sir.

Q. That was in 1876?

A. Yes, about that time.

Q. Now, then, if the river was over there in 1876, how long has it been over here?

A. It has never quit caving and is still making on one side.

Q. How close would it be to the left bank coming down?

A. That would depend upon the stage of the water, 100 to 150 yards.

468 Q. The river, as far as you can remember, is along in here?

A. Yes, sir; I think so, it is difficult to draw a line of the river in 1876, it was shifting very rapidly.

Q. Did the water there run through McKenzie Chute in large quantities?

A. It was about a fourth the size of the other river.

Q. This is along in 1876 when the river cut off it left this country slack water, then it began to fill up slowly, didn't it?

A. Yes, sir; and began to grow up in willows.

Q. Is there a current through there now in high water?

A. No, it is all slack water now.

Q. Are you positive that this land commencing here was the left bank of the river in 1876?

A. The question as I understood it was where the steamboats ran.

Q. Did you draw this blue line right here for the left bank of the river in 1876 on the Tennessee side?

A. That is practically so.

Q. What do you mean by that?

A. I mean that the boats came along and cut right in close to that bank.

Q. At ordinary water the course would be about where this line is?

A. Yes.

By the Court:

Q. When did the steamboats cease to go around there?

A. It was either the first or second season, I am not positive which,

469 my recollection is that we quit going there at low water season the following fall. You see it soon filled up around there with snags, and got to be dangerous.

Redirect examination by counsel for plaintiff:

Q. You have been speaking of what you understood to be the old channel, have you not?

A. Yes, sir; where the steamboats run; the steamboat channel is not the same as the bed of the river to a steamboat man. I was answering Mr. Ewing as to where the steamboats ran.

Q. Now, Captain, you have drawn these two red lines to indicate the cut-off, did you mean this to indicate the banks before the cut-off?

A. I meant that this was the shape of the neck in 1876.

Q. You do not mean to draw any precise line?

A. No; I think that is impossible.

Q. The new channel first appeared here, how wide was it?

A. About 150 yards.

Q. How long did it take to cave west to the present east bank of Centennial Island?

A. Only three or four days.

Q. Did it cave and widen in any other direction?

A. Yes, south; the old channel of the river being unable to turn west had to wash away this point.

Q. Did the water go that way very rapidly?

A. Yes, sir; very rapidly.

Q. Do you know why that cut-off there widened and caved to the west?

470 A. Yes, I saw it there on Sunday morning, it drew the water from up towards 37 and a great volume poured through and it had to be cut away in order to let this water go through there, that relieved 37.

Q. In drawing this channel marked by the red line did you mean to say that there was no water between there and the bank?

A. No sir; this was the bank of 1876.

Q. Am I correct in understanding you to say that this was the channel of the river after the cut-off?

A. No, sir; it was not, we had to lead through there continually.

Q. In what direction did that V shaped levee first make up?

A. It commenced up there and made southeast.

Q. Suppose the water extended from the edge of the bank on the northeast corner here, what would be the width of it on the Tennessee side?

A. A mile or a mile and a half.

Q. That made the edge fall across and make to that mark?

A. It cut into the bank and straightened out.

Q. Now, I will ask you to point out there the course of the river?

A. It was in this direction.

Q. How long after the cut-off did it take the river to cave back to the east bank of Centennial Island?

A. It receded very rapidly; you see the water was dammed up there, between Dean's Island and 37, it had to find an outlet 471 to the cut-off, this made it tear away the east bank of Centennial Island, it quit eaving there in three or four days.

Q. And it now goes through there?

A. Yes, all this country is grown up in willows.

Q. How far was the *rater* (?) of the river from that bank there?

A. It was right up against it.

Q. Captain, Mr. Ewing had you to draw low water mark on Dean's Island at various stages of the water, did you mean to draw the bank making the bed of the river or simply the water mark on the sand bar?

A. Simply the water mark on the sand bar.

Q. What was the nature of that bank over there?

A. It was a sloping sand bar.

Q. How far was the high bank from the low water mark over there? What was the nature of the land there?

A. Just a barren sand bar.

Q. You have spoken about the country around Dean's Island, when was this land made there?

A. It has been made since the cut-off.

Q. Are you acquainted with the timber on that land?

A. Yes, sir.

Q. What sort of timber is it?

A. Just common cottonwood and willows.

Q. Do you know anything of the nature and growth of cottonwood?

A. Yes, sir; they grow very rapidly.

Q. Is there any timber in that neighborhood that you know the age of?

472 A. Yes, I am cultivating land that was in the bottom of the Chute of 37 at the time of the cut-off. Some of the trees left on the land are two feet in diameter. The land has made and they have grown there since the cut-off.

Q. Now, you have shown repeatedly the channel of steamboat navigation, what do you mean by that?

A. I mean where the steamboats run.

Q. Is there any difference between that and the bed of the stream of the river?

A. Yes, the steamboat channel is generally the deep course of the river and is often very narrow and changes from one side of the river to the other, while the bed of the Mississippi River is seldom less than three-quarters of a mile wide at any stage of the water, but is not navigable for boats on all sides of it.

Q. You spoke of navigating this Chute of 37 six or seven years after the cut-off.

A. Yes, but I said little boats drawing about fifteen inches.

Q. You have stated that the low-water width of the river was about three quarters of a mile?

A. Yes, sir.

Q. Captain, I will ask you whether or not that this whole section of country between 37 and Dean's Island differs from the cleared land on the original banks in the neighborhood and whether it was not a part of the bed of the river?

A. It is very different from the land on 37 and Dean's Island mainland. It is lower and is covered in timber and was once a part of the old bed of the river.

473 Q. What was the width of the Chute of 37?

A. I think a quarter of a mile or a little less.

Q. Was that high bank of the Chute of 37 left there after the cut-off?

A. Yes.

Q. I wish to ask you how that made land formed, did it form rapidly?

A. Well, yes; it grew from year to year until it became solid.

Q. Was it formed from sediments?

A. Yes, it was.

Q. Did that take considerable time, or was it done suddenly?

A. I think it first appeared above water in about three years.

Q. Was it formed in the usual manner that such land is formed in the Mississippi River?

A. Yes, sir.

Q. Has the Mississippi established for itself a well defined channel south of here?

A. The river is over here now.

Q. About how far is it from Huddleston's northeast corner across there to the middle of the river?

A. Why, it is about two miles, this river has receded south about two miles from the corner.

Q. Where the cut-off first was is dry land, *it is* not?

A. Yes, sir.

Q. I will ask you about this towhead property of H. W. Stockley's, was that the land that was washed away?

474 A. Yes, it was and made back.

Q. Is this towhead land entirely out of the bed of the river now?

A. Oh, yes, sir.

Q. Has the land caved there on the south side of Centennial Island since 1877?

A. Yes, it has caved all the while below Corona, and for the last several years has been caving at the landing, it had not caved at the head of the island by the old river as yet.

Recross-examination by counsel for defendant:

Q. This line here is the left bank of the river in 1876 when navigation ceased, coming down the river?

A. Yes, sir.

Witness excused.

(Cissna vs. Tenn., pp. 45-69.)

The State of Tennessee Introduced as Evidence in This Case the Further Testimony of O. K. Joplin Taken in Stockley v. Cissna. (See Cissna vs. Tennessee, pp. 112, 113.)

O. K. JOPLIN, witness for plaintiff, being recalled, testified as follows:

Direct examination by counsel for plaintiff:

Q. I will ask you, Captain, if in marking out the lines of low water to Mr. Ewing you assumed that that is a correct representation of the bank of 37?

A. I assumed that Mr. Ewing was talking to me of 37, the head of 37.

Q. Do you mean to say that the old river bank of 37 just before the cut-off was away out there?

A. I was assuming the bank of the river to be where he pointed out.

Q. As a matter of fact that old road over there is on the bank is it not?

A. I do not know much about the road.

Q. Are there any remains of the bank of old river here?

A. Oh, yes, of course, there is.

Q. That was the bank of the river there just before the cut-off?

A. Yes, the water came right up against the head of the island.

Q. You will notice here where Maj. Hunphreys has got the old river marked, have you intended to put it south of this, or was it over there?

A. In answering that question I assume that Mr. Ewing was asking me about the bank of the river here and that this map was correct.

Q. Do you know now where the high bank is?

A. I think it is further bank.

Q. Assuming that bank as you have stated to have been the bank of 37, where did the chute of 37 begin?

A. At the head of the island.

Q. I will ask you if it is not a matter of fact that this is the head of the island?

A. I think so.

Q. Then you intended to locate the head of the island as 476 here?

A. He was asking me about the field and I was simply answering him on the same theory that he was asking me about.

Q. Now, I will ask you who owns the place next to Mr. Stockley?

A. My wife owns it, but she lets me collect the rents.

Cross-examination by counsel for defendant:

Q. When I asked you to tell me the right bank of the river why did you put it in the middle of the river?

A. You were asking me about the head of the island.

Q. I asked you for the right bank of the river and you marked it in the middle of the stream.

A. I don't remember doing it, here is the blue line that represented it. I was not putting it in the middle of the river.

Q. At that time you think this was the right bank; then, the left bank is over here now, is it?

A. I think it is here.

Q. Didn't I ask you to draw me the right and left bank of the river and didn't you commence right here and draw right in the middle of the river and then awhile ago draw this line right here?

A. Mr. Ewing, I drew these lines here based on the true conditions of the river, and tried to explain to you and did the best I could. I quit steamboating four or five years ago.

Q. Will you please follow that left bank out to the current of the river?

A. I think this is the true condition of the bank today.

Q. But this is not the river of today?

A. In here it is not.

477 Q. Did it go off over there?

A. It headed against this bank, then it became water.

Q. You have made yourself just as clear as you can to this left bank, have you?

A. I have tried to, as you have asked me.

Redirect examination by counsel for plaintiff:

Q. Mr. Ewing ran his finger down in here, have you ever stated that the bank of the river was down here?

A. No sir.

Witness excused.

(Cissna vs. Tennessee, pp. 112, 113.)

The State of Tennessee introduced the Further Testimony of O. K. Joplin Taken in the Case of Stockley vs. Cissna. (See Cissna vs. State of Tennessee, pp. 310-312.)

O. K. JOPLIN was recalled and testified as follows:

Direct examination by counsel for plaintiff:

Here one of the jurors asked permission of the court to ask the witness a question, which was allowed:

The Juror: This, you state, represents the cut-off of 1876?

A. Practically so, yes sir.

Q. Is this the present channel of the river (pointing to Humphreys' map).

A. Yes sir.

Q. How did the present channel get over this way back up 478 here and how long has it been coming here?

A. After the cut-off the head of this island washed off and caved west to where it is at the present time. This was at the time of the cut-off.

Q. Has this ground been in the river since 1876?

A. The river receded and came this way rapidly and got over to where it is now.

Q. That represents the original Devil's Elbow; where does this water go over this way?

A. This is the channel in its present shape where it reversed itself. In other words, this water comes over in this shape and struck the towhead of Brandywine and it was deflected and passed on west and forced an outlet for itself through Fogelman's chute on the other side of Brandywine. That is the main channel now.

Q. Where does the water flow on south?

A. This water flows on and gets back into the channel right here.

Q. Across that old bed?

A. At Fogelman's outlet it hit Brandywine Island and run in here and tried to get back into its natural channel and dammed the water up here going around this way. The water from up stream struck here straight and backed, and in order to get back to the old channel took off this way around by Brandywine.

Q. How long has the river been flowing out right up here?

A. Since the cut-off, the river has continued to recede southwest on account of the caving until it has almost come to the line between Tipton County and Shelby County.

479 Counsel for plaintiff resumed the examination of the witness:

Q. How long after the cut-off till this towhead appeared?

A. I passed over there a few days after the cut-off. We had to lead in order to find our way. We did not know where the channel was, it was all a part of the river. Shortly after the cut-off a lump of blue mud appeared that I have spoken of, which soon developed into the towhead.

Q. Now, Captain, take the Government map of 1874. You notice that the Massey place is represented. Did your cut-off go through the Massey place or the Trigg place?

A. It went through the Trigg place and washed most of it away. It also struck the bounds of the Massey place and took most of that. When I first saw it it was about 150 yards wide and was extending across the Trigg place from the northeast and struck the Massey place about where it struck the lower river.

Q. Captain, you heard Mr. West speak of some large trees on the east bank of Centennial Island along old river here by Mr. Stockley's field. Now, I will ask you if there are any trees in this bank where he said along old river opposite the towhead 36 or 40 inches in diameter?

A. I had occasion to fall out with some of my tenants about cutting some of these trees along this bank at another place. There were none of them more than six or seven inches in diameter. Where he spoke of there was none at all.

Q. You do not know of any such trees?

A. I have never seen any such trees there.

480 Q. I believe you stated that you saw that small tract of land claimed by Mr. Stockley in this suit and shown here on Maj. Humphreys' map go into the river?

A. Yes, I saw this land go into the river in the spring of 1876; this land has made back since then.

Q. How did this land fill up?

A. It made back out in here towards 37 and Dean's Island and this towhead in here and along here east of Centennial Island. It all grew up about the same way.

Q. Which direction does Sandy Chute run?

A. Due west.

Cross-examination by counsel for defendant:

Q. You have pointed out here where you say this property fell into the river?

A. Yes, right here where I lay my pencil.

Q. Do you say this property fell into the river?

A. Yes, this property right here went into the river.

Q. But you never said this property here fell into the river?

A. No, sir I did not.

Q. That was never in the river in your judgment?

A. No, sir.

Q. State whether or not it is true you did see trees three feet in diameter growing upon this bank along the road there?

A. There is no road on the Centennial side.

Q. Is there an old road right along there?

481 A. Yes, that is the original bank of Island 37 before the cut-off.

Q. Was this the left bank of the river in 1876?

A. Yes sir.

Q. On the left bank of the river there are trees three feet in diameter, are there not?

A. There may be some on 37.

Q. Mr. West said there were trees along there 36 inches in diameter?

A. As I understand it he said along the bank of Centennial Island.

Q. Was there any trees of any size along the sloping bank of Centennial Island?

A. No, sir; that was a field.

Q. Was that the bank made by the cut-off?

A. Yes, sir.

Witness excused.

(Cissna vs. Tennessee, pp. 310-312.)

482 The State of Tennessee introduced as evidence in this case the deposition of H. W. Stockley, taken in the case of Stockley vs. Cissna. (See Record, Cissna vs. Tennessee, pp. 70-73.)

H. W. STOCKLEY, plaintiff in above case, being first duly sworn testified as follows:

Direct examination by counsel for plaintiff:

Q. Where do you live?

A. On Centennial Island.

Q. At or near Corona Landing?

A. Right near Corona, about five hundred yards, I suppose, from Corona.

Q. How long have you lived there?

A. Thirty-eight years, right in sight of Corona.

Q. Are you acquainted with the old Trigg place?

A. Yes, I am acquainted with the Trigg place?

Q. Who owned it?

A. It was always known as the Trigg place.

Q. Where did you live in reference to it, before the cut-off?

A. I lived about a half mile from it.

Q. On what place?

A. On my mother's place, adjoining the Trigg place.

Q. In what direction?

A. West.

Q. What was your mother's name?

A. Mrs. Lucy Stockley.

Q. What distance was it from her east line to the river due east across the Trigg place before the cut-off?

483 A. Over a mile and a half to the river due east from my mother's east line.

Q. What was the nearest distance across the elbow from river to river?

A. About a mile and a half.

Q. Was there a landing on your mother's place the year before the cut-off?

A. There was a landing on the south line of her land, boats landed there in her field.

Q. How long had it been there?

A. Three or four years, several years as well as I can remember.

Q. Was there a la-ding on the Brown place?

A. Oh, yes, there had always been a la-ding there. Red Brown's landing.

Q. Was the landing on your mother's place south and west of Trigg's?

A. It was.

Q. Since you have known it has the Trigg land extended north in the chute of 37 by accretions or recessions of the river?

A. It has.

Q. How far?

A. Nearly a mile, about a mile.

Q. Before the cut-off had that land increased in maturity, to such an extent that it was covered with timber?

A. Part of it was covered in timber before the cut-off.

Q. Had any of it been cultivated, how much land on the
484 Trigg place was in cultivation?

A. Before the cut-off, at least a thousand acres.

Q. What became of that land?

A. It was all washed away except about a hundred acres of cleared land was left.

Q. Did it go into the river at the time of the cut-off?

A. It all went in at once, in about three days.

Q. Were you in the neighborhood at the time of the cut-off?

A. Yes, sir.

Q. Tell the court what you saw of the cut-off?

A. The cut-off went through in March, 1876. The night it occurred I had spent with some friends near Thomas' Landing, up the river from where the cut-off made. I did not know of it and early the next morning I started home down the river in a dug out. I noticed the water had fallen considerably, which surprised me, as I had been under the impression that the river was rising. As I got on down the river I saw a crowd of people waving and gesticulating at me. I pulled into the shore to see what they wanted, and found they had called me in to keep me from being sucked into the cut-off. I then saw that it had gone through.

Q. Describe its appearance?

A. Then it was between 200 and 300 yards wide and you could see the land.

Q. Is that the place you own on the east end of Centennial Island now?

A. It is.

485 Q. How far was it from the old levee on the Trigg place as shown on this map to the Chute of 37 just before the cut-off?

A. At least one mile.

Q. What was the nature of the bank along Trigg's north line all along in the Chute of 37 before the cut-off? Was it a caving bank?

A. No, it was a sand bar along there. There was a wide sand bar all along there in the chute from the main river down to my mother's place. There came a large tract of woods land before you cross the levee into the field on the Trigg place.

Q. Did the chute of 37 lie up against the high bank of Island 37 where it does now at the time of and just before the cut-off?

A. It did.

Q. Did the river run along the present east bank of Centennial Island before the cut-off? I mean the bank along the old river here on the map by your field?

A. No, sir; It was at least a mile east of there. The river caved up to the present bank at the time of the cut-off?

Q. What was this place marked old river on the map here, then?

A. The south part is on what was the field on the Trigg place. Up here towards 37 was woods land.

Q. Do you know in what state Island 37 is?

A. It is in Tennessee. I own land over there and pay taxes in Tennessee.

Q. Then, this river formerly between Island 37 and Dean's Island is the boundary line between the states, is it not?

486 A. It is and always has been.

Q. From your knowledge of the lay of the country at that time, was the land marked "B" here the part of the Trigg place just before the cut-off?

A. Yes, that was part of the Trigg place.

Q. Point out how far it extended northward?

A. About along here, before the cut-off there was a big sand bar.

Q. Was there a big sand bar north of the Trigg place?

A. The sand bar was along in here, a mud bar was forming right there along the chute on the north.

Q. Point out the location of the cultivated land on the Trigg tract?

A. All this is, here and down here, too.

Q. What land was directly east of the Trigg land between it and the river just before the cut-off?

A. That was what is known as the Walt place.

Q. Was that there just before the cut-off?

A. Yes, it was there just before the cut-off?

Q. What place was south of the Trigg place?

A. The Red Brown place.

Q. Any other?

A. There was some other place. I don't remember whose, the Bateman place, I believe.

Q. Where was the Massey place?

A. The Massey and the Bed Brown places was the same thing.

487 Q. Did any of the Massey place go in the river at the time of the cut-off?

A. It all went in.

Q. How much land altogether went into the river at the time of the cut-off?

A. The first three days about fifteen hundred or two thousand acres caved into the river.

Q. How much of the Trigg place went in?

A. Eight or nine hundred acres.

Q. About how wide was the river at this northeast corner of the Huddlestons?

A. About a mile and a half wide.

Q. How wide was the river up here at the southeast corner of the Trigg one hundred and fifty-two acres on 37?

A. Nearly two miles wide.

Q. Who was in possession and claimed that Trigg 152 acres at the time of the cut-off?

A. I do not know who was in possession of it at the time of the cut-off.

Q. Describe the place marked old river on this map here, as to width, depth and vegetation in it?

A. This is old river, it is filled up now or very near it, there is no water in it now, the water comes into it at extreme high water, some places in it are fifteen feet deep.

- Q. Can it be crossed dry-shod at different places at low water?
 A. You can cross dry-shod; it is perfectly dry, no water in it at all now.

488 Q. What is the stage of the river now?
 A. Lowest stage now.

Cross-examination by counsel for defendant:

- Q. Was this bank here the left bank of the river prior to the cut-off in 1876?
 A. No, sir; it was not.
 Q. Where was the left bank of the river in 1876 just before the cut-off?
 A. Here was the left bank of the river at the time of the cut-off, this was the bank of Island 37 just before the cut-off and this in here was the bank of the river (points them out on the map).

Redirect examination by counsel for plaintiff:

- Q. Do you mean to state that the bank just before the cut-off was the same as that of the old survey?
 A. I was not born then and could not know.
 Q. Was there any eaving on Island 37 prior to the cut-off?
 A. There had been no eaving there that I know of just prior to the cut-off.
 Q. I will ask you this question, do you mean to say that the land marked Trigg's 152 acres and Trigg's 37 acres were out of water at the time of the cut-off?
 A. No, they were not.
 Q. Is it not a fact that the road shown here on the map commences and runs upon the old bank as it was left upon the
 489 bank after the cut-off?
 A. Yes.

Witness excused.

(Cissna v. Tennessee. pp. 70-73.)

*The Further Deposition of C. A. Stockley (Stockley vs. Cissna)
 Introduced on Behalf of State of Tennessee.*

C. A. STOCKLEY, witness for the plaintiff, being first duly sworn, testified as follows (Cissna v. Tennessee, p. 74-82):

Direct examination by counsel for plaintiff:

- Q. Please state your name.
 A. C. A. Stockley.
 Q. Are you a relative of the plaintiff in this suit?
 A. Yes, sir; a brother.
 Q. Where do you live?
 A. At Corona.
 Q. Do you live on Centennial Island?

- A. Yes, sir.
- Q. How long have you lived in that country?
- A. Off and on all my life.
- Q. Did you live there prior to 1876, when the cut-off occurred?
- A. I was there when it was made.
- Q. Were you acquainted with the place known as the old Trigg place?
- A. Yes, sir.
- 490 Q. Can you go to this map and point it out as it lies there?
- A. Yes, sir (here witness refers to Humphreys' map).
- Q. Is that land marked Huddleston the same or part of the Trigg tract?
- A. The Huddleston tract is part of the Trigg tract.
- Q. Did any of that land go into the river at the time of the cut-off?
- A. Yes, a great deal of it.
- Q. How much?
- A. Seven or eight hundred acres, probably more, I could not say exactly.
- Q. Are you a son of Mrs. Lucy Stockley?
- A. Yes, sir.
- Q. Was there a landing on the south boundary of your mother's place?
- A. There was.
- Q. Did the river lay in front of it?
- A. Yes, sir.
- Q. How far was it across from the river northeast to the Huddleston boundary before the cut-off?
- A. About a mile and a half.
- Q. What was the distance from Mrs. Stockley's line due east to the river?
- A. About a mile and a quarter.
- Q. What was the distance from the southwest corner of the Trigg place to the northeast corner?
- A. Between one and two miles, nearly two miles.
- 491 Q. What is the present condition of the land where the landing was on your mother's place?
- A. Part of it went into the river, the river runs over it.
- Q. What part?
- A. The southwest part of the old field, a great deal of it was left dry land, the upper part of Centennial Island.
- Q. Is that map a correct representation of the present lay of the river, these blue lines?
- A. Yes, sir.
- Q. Was any of that Trigg place left as dry land?
- A. Yes, a little on the west bank.
- Q. Is that a part of the west bank?
- A. Yes, sir (points it out on the Humphreys map).
- Q. Will you state whether or not, since you have known the Trigg place, it had made any accretions prior to the cut-off?
- A. It has made between '37 and northward, in the Chute of '37.

Q. Was the north boundary of the Trigg place in woods or field?
A. It was in woods.

Q. Now, I will ask you from your knowledge of the Trigg place if this tract marked "B" here was part of the Trigg place before the cut-off?

A. Yes, the Trigg place extended that far.

Q. How far beyond Sandy chute did the Trigg place extend?
A. About a mile north.

Q. Are you acquainted with the old river as it is now, this stream with the old river that goes out between Centennial Island and the towhead?

492 A. Yes, sir.

Q. About what is the depth of the bank of the old river?
A. It varies from three to five to ten feet.

Q. Take right over here about where the south line of 37 comes to, say about half way from where Sandy Chute comes out to the road, how deep is the bank?

A. I should say about three to four feet deep.

Q. What is the nature of the soil in the bed of old river?

A. Sandy, very sandy, right in the bed.

Q. Is there any vegetation growing there?

A. Yes, willows.

Q. The main bed, how is that?

A. It is sand.

Q. I will ask you whether or not this tract of land marked "A" on the map lies east of and in front of the land owned by H. W. Stockley on the east end of Centennial Island and 37?

A. Yes, it does.

Q. Were you living in that country just after the cut-off?

A. Yes, sir.

Q. Will you describe how it made, whether it made slowly or rapidly?

A. It made very fast.

Q. What do you mean by fast?

A. Well, you could not see it growing, of course; it was about 3 years between the cut-off and the time the land began to appear.

Q. How was it made back there?

A. It was made by sediments, just a gradual increasing.

493 Q. You were speaking of the made land marked on Maj. Humphreys' map and claimed by the plaintiff, are you?

A. Yes, sir.

Q. In what condition did the land first appear above the water?

A. When it first came out it was mud flats with sand knolls in places; and there were low places filled with water like sloughs and ponds.

Q. Go on and tell how the land grew and developed?

A. Well, in a year or so willows began to grow on it and then cotton woods. They kept on growing and the land kept getting higher and higher at every high water. It still gets higher now at every high water.

Q. How long after the land appeared above the water was it before it got firm enough for men and horses to go on it?

A. I don't know exactly. Several years though. It was too miry to ride on for a good many years after, until it got high enough to be above the water long enough during the year to dry out.

Q. State whether this land made in such a rapid fashion that you could see it grow or increase in height?

A. Why, no. It only made in high water and you could not see it at all then, because it was under the water. Only after every overflow you could know that it had made a little by the mud and sand left on it.

Q. Was it made in chunks of earth large enough to be seen, or was it made by the small particles held in solution by the water?

A. It was just made by the sediment held by the water. The muddy water would just settle and leave the mud and sand 494 that the water had held. There were no chunks of earth in it as I ever heard of.

Q. State whether or not it was formed in the same manner common to mud and sand bars in the Mississippi River.

A. Yes, just like all the rest of them. As soon as it got above the water the willows began to grow. The towhead came out first and grew the fastest.

Q. Does this made land lie right against the land owned by your brother, H. W. Stockley, the plaintiff, on 37 and Centennial Island?

A. Yes, it begins right there by the bank and extends east to Dean's Island.

Q. Were you in that neighborhood when the cut-off was made?

A. Yes, sir.

Q. How far from the cut-off did you live?

A. About three-quarters of a mile from where it first went through. It soon caved much nearer our house.

Q. Describe the cut-off as to the suddenness with which it was made.

A. It was made in one night. When we went to bed the water was all over the land, and when we got up next morning it was all off. It was then about two hundred yards wide and the land was rolling in rapidly.

Q. Go on and tell the court any other facts that will show how rapidly the land caved?

Mr. Ewing: If the Court please there is no need of any more testimony as to the suddenness of the cut-off. We admit that it was sudden, that it was an avulsion.

Mr. McSpadden: Then, we will rest with that admission 495 and not go into that question any further.

Q. What tract of land, if any, was there between the Trigg or Huddleston and the river on the east just prior to the cut-off?

A. To the east of the Trigg.

Q. Yes, between that place and the river?

A. There was a tract that belonged to Mrs. Walt. She was the daughter of Green Bateman, and the tract there was known as the Bateman land.

Q. Then there was a tract of land between Trigg on the east and the river just before the cut-off was there?

A. Yes, it washed away in the cut-off or just after.

Q. What was the nature of the bank along Trigg's north line in and along the Chute of 37, just before the cut-off?

A. It was in woods.

Q. I mean was the bank a bluff one or was it a sand bar?

(Sic) (evidently something omitted.)

melting into it all up and down it from one end to the other. The water was rushing through at a terrific rate. The negroes were very excited and it looked like the whole country was going to be washed away. You would see large slices of land go in at one time containing whole acres. We had to keep moving back all the time. Shortly after I got there we got some cotton stalks and pieces of wood and started a fire back about 200 yards from the cut-off, as it was cold. Before it got to burning good it was caved in. All that morning it caved awfully after it got well through, but when it was about a half mile it did not cave so fast that evening. By the next morning, it was the full width of the river. Then it quit caving on 496 the Twigg place, but has caved ever since on the south bank of the Tennessee main shore. When I got home I found most all the Trigg place and the south half of my mother's place had been washed away.

Q. Was the Trigg place the same as the Huddleston place marked here on Maj. Humphreys' map?

A. It was.

—. A. There was sand bar there. It began at the main river on the east and extended down the chute. All along there was a sand bar and mud flat.

Q. Was it caving there along Trigg's or Huddleston's north line in the chute before the cut-off?

A. No, sir; there was a bar all along there in the chute. I think the bank on the 37 side had caved some but on the Trigg side there was a sand bar.

Q. Was the Trigg land caving on the east before the cut-off?

A. Not to my knowledge. There was no bar there, but my recollection is that it was not a caving bank. It may have washed some, but it had not caved that I recollect of. Up above there in the bend by Thomas', it caved a great deal, and down on the west and south side of the place in the river down here it always had caved tremendously. It caved there all the time down here by the Bed Brown place.

Q. How wide do you estimate the river to have been at the north-east corner of the Huddleston grant before the cut-off?

497 A. Right here, I reckon it was a mile wide there.

Q. How wide was it up here on 37, across from the north-east corner of Trigg's 100 acres?

A. It was very wide there. It was one of the widest places on the river. It must have been a mile and a half there.

Q. Just before the cut-off?

A. Yes, sir.

Q. Was the present east bank of Centennial Island shown here on Humphrey's map, along Stockley's field, the bank of the Mississippi River before the cut-off?

A. Oh, no. The bank of the river was about a mile further east. That was in the field here till you got across the levee there, then it was woods until you got to the Chute of 37.

Q. How was it from the old levee here to the Chute of 37 before the cut-off?

A. About three-quarters of a mile.

Q. Do you know what state Island 37 is in?

A. It is in Tennessee. The people over there pay taxes in Tennessee, vote in Tennessee, and the schools are kept up by Tipton County, Tennessee, everybody knows it is in Tennessee.

Q. Then, do you know the river which was commonly reputed in the neighborhood to be the west boundary of the State of Tennessee?

A. This main here between 37 and Dean's Island.

Q. Do you know in what state Dean's Island is?

A. It is in Arkansas.

Q. I will ask you if you have frequently ridden over this
498 land in dispute?

A. Yes, sir.

Q. Have you frequently ridden over the land further to the east towards Dean's Island?

A. Yes, sir.

Q. Did you notice there any elevation or bank which was formerly the bank of the river?

A. No, sir.

Q. Is there any old bank of the river over there that is well marked that you know of?

A. Not that I know of.

Q. Did you ever, before the cut-off, notice the opposite bank of Dean's Island in Arkansas?

A. I did not pay a great deal of attention to it.

Q. State whether or not that was a bluff bank or a sand bar?

A. My recollection is that it was a sand bar.

Q. What is the width from the road up there to the old bank of the river prior to the cut-off across the northeast corner of 37?

A. About a mile and a half.

Q. Now, as to that road there that runs north, is that a public road?

A. Yes, sir.

Q. What sort of a crossing is that?

A. Perfectly dry.

Q. After crossing the river bank there, is that the original bank of 37?

A. That is the old bank on the 37 side.

499 Q. Has Centennial Island extended to where old river is marked?

A. Centennial Island has extended entirely to 37.

Q. Does this road lie on the top of the bank of 37?

A. Yes, sir.

Q. Is it right close to the bank there?

A. It is right up against it.

Q. Is there a pond right down in there?

A. Yes, there is a pond right near that road.

Q. Tell us what sort of a pond that is.

A. It has a dry bed nearly a half mile long and about 25 yards wide.

Q. What is the depth of it?

A. About knee deep.

Cross-examination by counsel for defendant:

Q. This old road was the left bank of the river in 1876 before the cut-off coming down stream, was it not?

A. I think it was; Island 37 was on the left hand side.

Q. What was the left bank of the river before the cut-off, will you please point out on this map about where the left bank of the river ran?

A. This old road was the left bank coming down stream, and this is the left bank of the river.

Q. I want to know what was the left bank of the river in 1876, before the cut-off?

A. My recollection is that the river came down this way; this here was the left bank of the river, and this is the left bank of 500 the river and this is the left bank of Centennial Island, going down this way this would be the left bank of Island 37 right along this way.

Q. Then Capt. Joplin was right?

A. I think he was.

Q. Was the road right on the left bank?

A. I think it was.

Q. Will you follow that left bank with this pencil so as to give us an idea as to where it was?

A. There might not have been any road right here, it might have been a little ways back from the bank in here, but it went right on the bank along here.

Q. You seem to know about the bank of the river in 1876, now trace for us the left bank of the river in 1876?

A. I guess it came right along here in this way.

Q. Now, then, according to your estimate this big tract of land claimed as the Huddleston grant was in 1876 entirely under the waters of the Mississippi River, was it not?

A. No, sir.

Q. If this was the left bank in 1876, where was the right bank?

A. This must have been the right bank certainly.

Q. Now, if Capt. Joplin put the right bank here he was mistaken, was he?

A. I do not know where Capt. Joplin put the right bank.

Q. If this was the right bank and this was the left bank, was not this land here under the waters of the Mississippi River?

A. This land in here was not under the waters of the
501 Mississippi River, it was a kind of made land.

Q. Well, you stated that you knew where the river ran in
1876?

A. In 1876 the river came in around this way.

Q. Now tell us where in 1876 the left boundary of the river was?

A. Here it is marked right here, this is the river, the left bank
must have been over in here.

Q. Now, then, if that is true, did not the river necessarily go
over all this property in here?

A. No, I do not think it did.

Q. I am just asking you where you would put the left bank of
the river of 1876?

A. Right at this mark here, and this is the bank of 37.

Q. I will ask you if this is not the correct way the river ran
in 1876; here is Pecan Point, right on around Dean's Island down
McKenzie Chute that you have right here; here is Island 37, and
there is McKenzie Chute; now is that right?

A. It looks too large for me.

Q. Well, assuming that the government passed on that part of
it, is this McKenzie Chute in here?

A. This is McKenzie Chute right here.

Q. Well, now, in 1874, did not the greatest volume of water go
right through here?

A. Yes, sir—

Q. How wide was this point down here?

A. I don't know exactly; I reckon it must have been a half or
three-quarters of a mile at the lower end of it.

Q. Now, you have gotten the left bank of the river right
502 here in 1876?

A. Yes, sir.

Q. Now, this water in here first stood as dead water and the
channel of the river changed?

A. When the river went over here this ground jumped up dry.

Q. It came up; in other words, the water gradually left old
channel and that was what you called "jumped up dry"?

A. Yes, it filled up and remained dry.

Redirect Examination by counsel for plaintiff:

Q. I will ask you if this is the remains of the original high bank
of Island 37 at the present time?

A. Yes, sir; that was there before the cut-off.

Q. Does that old river lie right where the public road crosses;
I am speaking of the old river back from that public road going
on 37, was that the Chute of 37 there just prior to the cut-off?

A. Yes, right where that road is.

Q. That, as a matter of fact, is dry?

A. Yes, sir.

Q. Does the road on 37 run along the bank of 37?

A. Yes, the road on 37 runs along on the high bank of 37.

Q. Just to the one side of the road is the made land?

A. Yes, the made land is the northeast of the road.

Q. How far from the road is the made land?

A. Right along by it, fifteen or twenty feet.

Q. Look at this piece of land marked "B"; I will ask you whether or not that was part of the old Trigg place north of Sandy Chute?

503 A. Yes, as I remember the Trigg place extended out and up east from the head of Island 37 and extended back in here.

Q. The Trigg place had extended greatly north then at that time?

A. Yes, sir; back next to Island 37, on the northwest corner of Trigg's land was all in timber and up here was the cleared land.

Q. That piece marked "B" was still out of the water and part of the Trigg tract?

A. Yes, sir.

Q. Does that correctly represent old river as it lies there now?

A. This is old river that runs around Centennial Island; yes, that is a correct representation of the shape of old river now.

Cross-examination by counsel for defendant:

Q. You have found this old river for the first time; now tell us if it is not a fact that in 1876 old river ran in here?

A. No, old river went around this way.

Q. What do you mean by old river; like it is to-day or the old bed where the river used to run?

A. Here is where it used to run, but after the cut-off all this land was dried up, it left all this land in here.

Q. Did any river ever run around that way?

A. Part of it ran around that way for the steamboats went down that way; the cut-off went right through here; here is a little stream there has always been a little water in here.

Q. Did the Mississippi River ever run through here?

A. It ran around there in this direction and over there; the main river never did run in here.

504 Q. What separates Centennial Island from Island 37?

A. In 1876 there was a stream of water.

Redirect examination by counsel for the plaintiff:

Q. Is it not a fact that at the time the cut-off was made all this land included here in the Huddleston lines was in cultivation?

A. Yes, that was all in cultivation; there was some woodland here.

Q. I will ask you if the river at that time was over in here?

A. Of course not, the river came up this way.

Q. As a matter of fact where McKenzie chute is laid down on Maj. Humphrey's map has been in cultivation for many years?

A. Yes, I am working land right along in here just about the middle of the river.

Recross-examination by counsel for defendant:

Q. Did McKenzie Chute run from the Mississippi River?

A. It run from the head of 37 to the foot of 37.

Redirect examination by counsel for plaintiff:

Q. Was that the bank of the main river over there on Centennial Island or the bank of old river?

A. There was a fill in there; here was the chute.

Q. How far did the land extend in that way?

A. Up in here to the best of my knowledge, about a mile.

Q. How much woods were north of Trigg's?

505

Q. Have you attempted to say that that was not land in here before the cut-off?

A. No, this was land in here.

Q. Was Mr. Stockley's field on Centennial Island in the water?

A. Certainly not.

Witness excused.

(Cissna vs. Tennessee, pp. 74-82.)

506 *The Deposition of E. W. Massey Introduced as Evidence on Behalf of the State of Tennessee, said Deposition Having Been Taken in the Case of Cissna vs. Stockley and Used as Evidence in the Case of W. A. Cissna vs. State of Tennessee. (See Cissna vs. State of Tennessee, pp. 83-106.)*

Deposition of E. W. Massey.

IN THE

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

W. A. CISSNA

vs.

ENOS WHITE and H. W. STOCKLEY.

Certified Copy of the Deposition of Mr. E. W. Massey. Filed December 25, 1901, in the U. S. Cir. Ct., W. D. Tennessee.

Be it remembered that on the 12th day of February, in the year of our Lord 1901, I, N. B. Doss, a Notary Public, duly appointed,

commissioned and qualified in and for Tipton County, Tennessee, did call and cause to be and personally appear before me, at the store of Charles A. Stockley, at Corona Landing, Tipton County, Tennessee, E. W. Massey (and other witnesses whose depositions are not introduced in Arkansas-Tennessee Boundary case), to testify and the truth to say on the part and behalf of the defendant,

W. H. Stockley, in a certain civil cause or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas, at Helena, Arkansas, wherein W. A. Cissna is plaintiff and Enos White and W. W. Stockley are defendants. And the said witness, E. W. Massey, being about the age of seventy-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the matter of controversy aforesaid, I did cause said witness to be carefully examined by counsel for the defendant and counsel for the plaintiff, and the said witness thereupon did depose, testify and say as follows:

Direct examination by Mr. McSpadden, for plaintiff:

Q. State your name, age and place of residence?

A. E. W. Massey; I will be seventy-four years old the 16th of March; I live on Island Thirty-seven, in Tipton County; it is really a towhead; they call it Island Thirty-seven.

Q. How far do you live from Corona Landing, the place where we are taking the depositions?

508 A. It is five or six miles.

Q. In what direction?

A. North.

Q. How far is this Corona Landing from Memphis?

A. I believe it is thirty or forty miles. I forget which now.

Q. Do you know the distance from Memphis to Helena, Arkansas?

A. No, sir, I do not.

Q. Are you acquainted with a certain tract of land on the Tennessee main shore known as the Jesse Benton's heirs and J. Benton's 1,436½ acre tract?

A. Yes, sir; I know it—every bit of it.

Q. Did you ever live near it; if so, how long?

A. Yes, sir; I lived adjoining of it a good many years; I can't tell you how many.

Q. When did you first become acquainted with it, or move into that neighborhood?

A. I don't recollect, it has been so long ago; it has been twenty odd years ago, I reckon, or may be more; I don't remember exactly without having time to study it—count it up.

Q. How long have you been acquainted with that tract of land?

A. The Jesse Benton tract; I have been acquainted with it twenty odd years or more, I think.

Q. Do you know the location of the corners of that Jesse Benton tract?

A. Yes, sir.

509 Q. Do you know the exact location of the northwest corner of that tract?

A. Yes, sir.

Q. State how it was you came to know its location?

A. I own land right adjoining of it. I bought Bedford Brown's land right adjoining of it.

Q. Did any one ever point it out to you?

A. Yes, sir.

Q. Do you recall who it was ever pointed it out?

A. Old man Hardin W. Bateman showed me the corners; he bought a part of it.

Q. I will ask you to state whether or not the location of that northwest corner is generally known to the people in its vicinity?

A. Yes, sir; it is an old established corner.

Q. I will ask you to state whether or not you have recently pointed out that northwest corner of the Jesse Benton 1436½ acre tract to any one at the request of the defendant, H. W. Stockley?

A. Yes, sir.

Q. Who was it you pointed it out to?

A. It was a surveyor from Memphis; I have forgotten his name.

Q. Was it Maj. Humphreys?

A. Maj. Humphreys, I believe; I am not sure about the name.

Q. Were you present when that surveyor began his survey?

A. Yes, sir; well, let's see; I believe I was; I don't know whether I was present or not when he began it.

510 Q. Were you present at any time that day on which he surveyed?

A. Yes, sir.

Q. I will ask you to state whether or not you pointed out the exact location of that corner to this surveyor, at the instance of Mr. Stockley?

A. Yes, sir, I showed him an old stump. It was an ash tree stooping, and it blowed down.

Q. About how long ago was it he made that survey?

A. I can't tell you, sir; I have been so sick; it has been several weeks ago.

Q. Who else was present at that time?

A. Tony Bateman, I believe.

Q. Do you recollect any others?

A. No, sir; I can't recollect. I have been very sick; I don't remember exactly.

Q. Was Mr. H. W. Stockley present—Walter Stockley?

A. Walter Stockley was present.

Q. What tract of land, if any separated that Benton northwest corner from the old Trigg tract?

A. Well, the Jenkins entry and the Potter land, both of which ran to the Trigg land, the old line.

Q. I will ask you whether or not both of those tracts, the Jenkins and the Potter, cornered at that northwest corner?

A. No, sir; I don't think the Jenkins land did. The Potter land cornered there, but the Jenkins land, I think, though I don't remember exactly, run south—that is south of the Benton tract; I think it does, but I am not right sure; I can't recollect.

511 Q. I will ask you whether or not the Shelby County line crosses that Benton tract at any place?

A. Well, all I know about that is what old man Bateman told me; he told me it crossed it.

Q. You don't know the location of the Shelby County line through there?

A. No, sir; I don't know where it is exactly; I know pretty near where it is, but I don't know exactly.

Q. I will ask you if you are acquainted with the old Simon Huddleston and John Trigg tract of land?

A. Yes, sir; somewhat acquainted with it.

Q. How long have you known that tract?

A. Well, I remember it has been ever since the war; I don't know how long that has been. I know there was a public road from Covington.

Q. I will ask you, Mr. Massey, to state whether you ever owned that Potter tract?

A. Yes, sir; I owned all of the Potter land.

Q. By what name was that old Huddleston or Trigg tract known when you first got acquainted with it; what was the name of the place; I speak of this tract of land part of which is now owned by the defendant Stockley?

A. Well, it was called the Trigg place down to this road 512 there, I think.

Q. I will ask you to state, Mr. Massey, in what state and county was that Trigg tract of land when you first came here?

A. It was in Tennessee and Tipton County.

Q. State whether it was on the main shore of Tennessee?

A. Yes, sir.

Q. What, if anything, separated that tract and the State of Tennessee from Arkansas at that point?

A. The cut-off.

Q. I am talking about the time you came here?

A. Oh, I didn't understand you.

Q. The question is, what separated the State of Tennessee and this Trigg place on the one hand, from the State of Arkansas on the other?

A. Let me get it right.

Q. In other words, what was the boundary of the State of Tennessee?

A. The Mississippi River.

Q. State whether or not that Mississippi River ran between the Trigg tract and Dean's Island?

A. Yes, sir.

Q. About how wide was that river?

A. About a mile wide. Well, it was from over yonder next to Arkansas, and it was called two miles wide over there. That was the widest part of it over there where it ran around against 513 the Arkansas shore around Dean's Island.

Q. Well, state whether or not, any part of the River at that time, ran between this Trigg place and Island 37 and what it was called, if it had any particular name?

A. Well, it was the chute of 37.

Q. About how wide was that chute of 37 between the Trigg place and Island 37 at the time you came here?

A. It was nearly a mile wide, something near a mile.

Q. At the time you came here which river was the steamboat channel, that to the north of Thirty-seven or that between Thirty-seven and the Trigg place?

A. One was about the same as the other.

Q. State whether or not Island Thirty-seven extended as far east as the Trigg tract, or if there was any difference between their east lines state what it was?

A. Island Thirty-seven.

Q. That is, did it come as far east and the Trigg east line?

A. No, sir; not by a long ways. There was nearly a mile difference. The Trigg place extended nearly a mile, or quite a mile east of Thirty-seven, further east than Thirty-seven.

Q. I will ask you to state the name of the owner of the body of land that was just east of the Trigg tract and between it and the river, if there was any such, when you first came here?

A. East of the Trigg tract?

Q. Yes, sir; the name it went by.

514 A. Well, there was a little island there.

Q. Just east?

A. There was nobody owner of it.

Q. Nobody the owner of the land?

A. No, sir; not that I ever heard.

Q. Did the river at that time run along the whole east boundary of the Trigg tract?

A. The whole east boundary of the Trigg tract.

Q. Yes, sir; from its south boundary line to its north boundary line?

A. I am not sure, but I believe it did; I am not sure, unless I had time to think about it.

Q. Did Mr. Green Bateman, or any of his heirs, own any land in that neighborhood; that is, on the east or southeast of the Trigg tract?

A. Let's see how that was now; their land was all south of it, I think, but I don't remember; I can't think right at the moment. Let's see. East of the Trigg tract, you say?

Q. Yes, sir.

A. Yes, sir; they owned last east of it, I think, as well as I remember.

Q. At the time you first came here, in what direction was Dean's Island from the Trigg tract?

A. Dean's Island was northeast of it I think a little east.

Q. I will ask you to state whether or not Dean's Island
515 extended far enough south to be east of any part of the Trigg place?

A. I believe it was pretty near even. There was the Trigg tract, this high part of the land, and then Dean's Island. I don't believe any of it was east of it; I am not sure, but I don't believe it was.

Q. About how large was Dean's Island at that time?

A. I can't tell you, sir. Dean's Island was a small place when I first knew it.

Q. Could you make an estimate of how many acres were in it?

A. I could not, sir.

Q. Were there any cultivated acres of land on it?

A. Yes, sir.

Q. Could you make an estimate of how many?

A. No, sir; but I knew the parties that cultivated it; they didn't cultivate much land.

Q. Who were there?

A. Old man Bob Dean and his brother, and let me see what was the other's name; old man Dave Wright; the widow Dean, and Jake Eldridge.

Q. That makes five.

A. Yes, sir.

Q. Was there as much as one hundred and fifty acres of land in cultivation on that island, as near as you can estimate it?

A. I don't think there was. Dean's Island was a very small place, they all lived right there close together.

Q. I will ask you to state whether or not the main body of the river ran along by Mrs. McGavock's place, which is on the
516 Arkansas bank, and extend up and down Dean's chute?

A. Yes, sir; Mrs. McGavock's place, the Eldridge place and all that where John McGavock lived—that is the widow's now. His land extended right down north of Dean's chute, down to Shawnee Village. I think Eldridge lived on the lower part of it.

Q. State whether or not they had a landing over there, the McGavock's.

A. Yes, sir; Mrs. McGavock had a landing at the head of the chute, or a little below. Well, right at the head of it they all had a landing there.

Q. Do you mean Thirty-seven.

A. No, no; not opposite Island Thirty-seven. John McGavock's landing was in front of his house, and Mrs. McGavock's is a little lower down.

Q. Lower down towards Dean's chute?

A. Nearly to Dean's chute, toward the head of Dean chute.

Q. Was that landing down the river from Dean's Island as the river ran at that time?

A. No, sir; it was above. Dean's Island ran right by Mrs. McGavock's house.

Q. Well, it is the Elkridge place I had in mind.

Witness: The Elkridge place is away down toward Shawnee Village, and adjoining it. I knew Elkridge mighty well.

Q. At the time you first knew Dean's Island, state whether or not the island had begun to make to the west of it?

A. No, sir.

517 Q. About when did the bars or lands first begin to form along it, to the west of it?

A. That was after the cut-off made in 1876.

Q. What was this section of the country down east, in which the old Trigg tract was situated known as when you first came here; did this neighborhood have any peculiar name?

A. Let's see; I don't remember.

Q. Do you recollect ever hearing it called Devil's Elbow?

A. Oh, yes sir; it was the Devil's Elbow all around.

Q. Will you describe the river as it ran around and made this Devil's Elbow, as to how long the elbow was?

A. The elbow was thought to be thirty or thirty-five miles around. The cut-off made through my place, and that cut it all off.

Q. About what was the width of the strip of land that cut through in 1876, the Centennial cut-off?

A. That made right down through my place. Well, a few days made a difference, you know. In about a week it was three-quarters of a mile wide.

Q. I mean the width of the strip of land before it was cut off, the part that joined the island to the main shore over there; what was the width from river to river?

A. I could tell pretty nearly exactly. Well, I would just say rough something near a mile. I could calculate it exactly. I believe between half and a mile, something along there.

518 Q. State what change in the river has taken place since the war down there; what great change in the river has taken place?

A. You mean the Elbow?

Q. I just mean for you to call its name; in other words, state whether or not there has been any cut-off?

A. Yes, sir; there has been a cut-off; it shortened the distance about twenty-five or thirty miles.

Q. When did that cut-off take place?

A. In 1876.

Q. Do you recollect the month?

A. March.

Q. Do you recollect the date?

A. The 7th; I think that was it exactly.

Q. Just tell us what you recollect about the occurrence on that day.

A. Well, it cut right through my place.

Q. Did you see it?

A. Yes, sir; let's see. Yes, sir. I saw it, and like to have fell in it. I liked to have caved off with it.

Q. I will ask you to state whether or not the cut-off took place slowly or rapidly, or how?

A. Very rapidly.

Q. About how much land caved into the river on that day, if you can estimate it?

A. On that first day?

519 Q. Yes.

A. I can't say; well, there was one hundred acres or so; can't tell without thinking a good while.

Q. About how wide did the cut-off become on that day?

A. It became nearly a half mile wide.

Q. The whole length?

A. The whole length.

Q. Did it cave in much of the old Trigg place on that day?

A. It caved in a good deal of it on that day.

Q. I will ask you to state whether or not within the next few days after the cut-off the bank caved much?

A. Yes, sir.

Q. How long did it take the cut-off to reach the average width of the river, about how many days?

A. I couldn't tell you. The caving was west on the Trigg land, and on the Stockley place. Let's see. This was the Stockley place, down here, and that was the Trigg place, but it caved on until it got to the Stockley place, and got pretty wide.

Q. Did it continue to cave rapidly for the next few days after it went through?

A. For two or three days it caved rapidly.

Q. I will ask you what part of the Trigg tract it went through at that time?

A. The east part of it, and caved off the Stockley land on the southeast corner.

520 Q. Did it touch the Bed Brown place?

A. Yes, sir; it washed nearly all of that away; I owned it.

Q. How (many) acres of land on that place did it take in?

A. I don't know. I can't tell you. I had to get away from there. My house was gone and everything else.

Q. I will ask you to state whether or not any houses of colored or white people caved in on that day?

A. I think there was some on the Trigg place, the cotton houses full of cotton, at that, caved in.

Q. I will ask you to state if you recollect whether your gin house was caved in, or had to be moved, or what about it?

A. It caved in.

Q. Were you able to save anything out of it?

A. I hauled some cotton away, and saved some cotton, because Capt. Andrews came along with his boat and took it off that night and the boiler, I believe, and some machinery.

Q. Did you have time to get your machinery out of your gin?

A. Not all of it, I don't think.

Q. When you first noticed that the water had gone through, about how far was it from your gin house?

A. I couldn't tell you, it wasn't very far though.

Q. Was it as much as a quarter or a half mile?

A. It might have been about a quarter, I don't remember exactly, without thinking.

521 Q. Did your gin house go in that day?

A. I don't recollect.

Q. State whether or not it went through what was known as the old quarters on the Trigg place that day?

A. I can't tell you unless I could study about it for a while.

Q. You can have time to think.

A. I don't think it did, but I don't remember unless I could study awhile.

Q. You know the location of Walter Stockley's present house, don't you?

A. Yes, sir.

Q. About how far out on the east side of his house did the cut-off come; that is, how far did the eaving take place?

A. Oh, it was some distance above that.

Q. As much as a quarter of a mile?

A. Yes, sir. Let's see. I lived right plumb south of the quarters. Walter's house is west of where the quarters were.

Q. His house now is west of where the quarters were?

A. Yes, sir; the quarters were east of his house, over on that little island over there.

Q. Am I correct in understanding you to say that the quarters were about where that little towhead island is now?

A. Somewhere on that island.

Q. They stayed, then, up to the time of the cut-off, did they not?

A. Yes, sir; I believe they stayed there.

522 Q. I will ask you whether or not there has been much eaving on the east end of Centennial Island; that is, the east bank of the place now owned by Mr. Stockley, which is a part of the old Trigg tract, and on which his house now stands, since the cut-off?

A. I think it eaved a good deal west.

Q. Since the cut-off?

A. Yes, sir; since the cut-off.

Q. Say take the next low water after the cut-off, the summer of 1876, about how far east of his house was the river, or the water, whatever water was left there?

A. East of his present house?

Q. Yes, sir.

A. I couldn't tell you.

Q. Was it as much as half a mile?

A. I don't think it was that far. I am not sure, though, unless I had time to look at it. I would have to tell from the other side of the river, you see.

Q. About how much of the old Trigg tract went into the river at the time of and just after the cut-off?

A. There was a thousand acres, I believe, in the Trigg tract.

Q. How much was left out, do you recollect?

A. The Trigg tract, I believe, run right along this road, and it has not caved a great deal since the cut-off; it has caved a little, but not much, I don't think.

Q. Then, this field of Mr. Stockley's that is now here on 523 the east and on Centennial Island is the part of the Trigg tract that was left after the cut-off?

A. Yes, sir; the balance of it is all across that way, and a little east.

Q. The balance of it is south and east of it?

A. Yes, sir; south and east of it.

Q. Are you acquainted with the towhead on which the piece of land that Mr. Walter Stockley has now under fence, just east of this field on the head of Centennial Island is situated?

A. Yes, sir; I am well acquainted with that. I know when it first started.

Q. Describe how it first appeared in relation to the shores, and how it grew after that, the first time you saw it, as it came under your observation?

A. The first time I ever saw it was on the northeast corner of that little island over there; I was on it; I went there; I saw some bumps, lumps up, and it was cakes of Bermuda grass piled up along, two or three or four acres of it, and I went on it.

Q. About how far from the Tennessee main shore was it at that time?

A. It was a good ways.

Q. How far from Centennial Island of H. W. Stockley's field was that?

A. H. W. Stockley's field over there?

Q. Yes.

524 A. It was the width of the river.

Q. Was it on the Arkansas side of the river, or the Tennessee side of the river?

A. Well, it didn't join Arkansas, and didn't join Tennessee.

Q. Which was it the nearest to?

A. It was the nearest to Arkansas, nearest to Dean's Island?

Q. Which way did that towhead grow after that?

A. It grew southwest. I know exactly how it growed; I was on it and looked at it.

Q. Did it grow towards Mr. Stockley's field, on the east head of Centennial Island, or in another direction?

A. Yes, sir; this island here?

Q. Yes, this is Centennial Island?

A. Yes, sir; it growed in this direction. Well, it came on down; I never noticed it all the way, but the head of it I noticed how it started off, it started off rather in the shape of a fish.

Q. I will ask you to state whether it grew rapidly or slowly?

A. I don't remember. Well it didn't grow so rapidly, I don't think. Yes, sir, in a year or two it was an island.

Q. How long did that body of water between it and Dean's Island continue?

A. Well, for some time.